

# ETHICS AND PROFESSIONALISM

THE BATTLE AGAINST  
PUBLIC CORRUPTION

JSH GILDENHUYS

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## **THE BATTLE AGAINST PUBLIC CORRUPTION**

**J. S. H. Gildenhuis**



**SUN PRESS**



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*Ethics and Professionalism*

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*Dedicated to the youth of South Africa. May they embrace morality and produce a new generation of politicians and public officials whose characters are built upon a personal morality of decency, honesty and integrity. May they adopt the Golden Rule as their principal guide in their social relationships.*

### **A message to our academics**

*“There is a disturbing culture of silence in this country that, if not dealt with, will negate the gains of our infant democracy.*

*There were a lot of academics that spoke out fearlessly about the evils of apartheid. Where have they disappeared? Their conspicuous silence since the advent of democracy has been disturbing.*

*White academics do not speak out on issues of national concern any more because they are afraid that they will be labelled racist. Black academics do not criticise government because of misplaced loyalty born out of a comradeship with its roots in the struggle against apartheid. They can't be seen to be criticising their own. These misguided loyalties and a culture of silence are putting South Africa's democracy at risk.”*

Mamphela Ramphele, “Our Democracy at Risk”, *Readers Digest*, April 2000

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# PREFACE

The author has ventured into a topic which is delicate and under researched by South African intellectuals and scholars. Hence, words such as bribery, extortion, kickbacks, fraud, forgery, embezzlement or graft tend to be understood in a simplistic way in our society.

The Public Service Commission has generated principles that must guide ethics in the public service. Such principles are critical but not backed by the kind of research that must be undertaken by intellectuals and scholars for us to better understand the cause and effect of corruption and the lack of ethics. What we know and understand from the principles set forth by the Public Service Commission is that an inexorable onus remains with every servant of the South African public to act in a manner that is congruent with honesty, integrity, professionalism and a genuine service-orientation. The majority of South African public representatives strive to uphold these fundamentals.

The author provides an historical analysis and uses international comparisons to develop his arguments. Using international wisdom is extremely important because it helps South Africans to better understand that problems of corruption and the lack of ethics is not a unique South African creation and nor is this country in a worse state than other countries. By exploring corruption in other parts of the world, the author has actually placed a challenge on South African intellectuals and scholars to pursue serious research on the subject of corruption and ethics. Therefore, Professor Gildenhuys' work opens up an important area of study as South Africans commemorate and celebrate a decade of democracy.

When nations are in search of good governance and reinventing government, controversial research also creates an opportunity for finding solutions to issues of corruption and lack of ethics. It is my hope that his work will stimulate debate and outstanding research within the South African intellectual community, the public and the private sectors and civil society. As a catalyst for such research, Professor Gildenhuys acknowledges the various bills of rights and codes of conduct democratic South Africa has produced. Furthermore, he gathers the forces, as it were, that may be employed in the battle against corruption, by examining the various bodies at our disposal in South Africa.

A new democracy like ours must have checks and balances and excellent research can serve that purpose. For the public servant, it is Professor Gildenhuys' view that it is the fundamental values that explain how a responsible person in a real situation may "make unpopular but right decisions."

**Prof Sibusiso Vil-Nkomo**

Dean of Economic and Management Sciences  
University of Pretoria

## FOREWORD

When I, as a public official, was presented with a Christmas gift from a private township developer many years ago, I was concerned about whether it would be right or wrong to accept such gift. Eventually that little voice inside me told me that I should not accept it, because it could be wrong and perhaps a bribe in disguise. I returned the case of whisky to the bottle store that had sent it to me on behalf of and with the compliments of the township developer. That day I knew that it was wrong and that one day the man would come back and demand his part of the 'deal'. I then realised that he valued my integrity no higher than the price of a case of whisky. As they say "Every public official has a price – some are expensive and some not so expensive – it all depends on his/her position in the hierarchy of authority."

Ever since I was appointed as an academic to teach Public Administration and Management at university level, I was concerned about the lack of what I termed a "value-oriented public management approach" in our teaching of the subject. I was always aware of the fact that Public Administration and Management encompassed much more than the so-called scientific management theories and principles. During the First Winelands Conference held at Stellenbosch University in 1987, I made the point that public administration in South Africa is in a crisis and posed the following questions: "Could it perhaps be that the values of our community have been grossly ignored because of the apartheid system? Or could it be that we got caught in the straight jacket of the generic process paradigm and failed to adapt to changing circumstances in our environment?" I went on to say that "The changing (political) circumstances in South Africa demand that both academics and practitioners adopt a new approach, an approach where our peculiar dualistic third world and first world value systems can be married to form the basis for the future. For a post-apartheid society we will be obliged to adapt or die; therefore one must ask: *South African public administration quo vadis?*"

As we were concerned about the possibilities of gross political corruption caused by the apartheid system and the few cases of administrative corruption that surfaced from time to time, we at Stellenbosch organised the Second Winelands Conference on "Ethics and the Public Sector". At the 1989 conference I made the statement that "Many serious instances of maladministration and corruption surface from time to time and the number of instances that have occurred over the past decade or more, cause grave concern. The concern is that what has been exposed lately could only be the tip of the iceberg. Examples are, for instance, the notorious Department of Information scandal of the late seventies, exposed by the Erasmus Commission, the corruption in the Department of Education and Training exposed by the Van den Heever Commission, the report of the Advocate-General on the irregular activities of former Minister P. J. du Plessis, and the corruption in the Carolina Municipality exposed by the Hiemstra Commission. The shocking revelations before the Harms Commission on the alleged activities of the so-called Police "hit squad" and the Civil Corporation Bureau, as well as the findings of Justice Hiemstra and his Commission on the security activities of the Johannesburg City council, strengthen the fear that what has come to the surface could only be the tip of the iceberg." The revelations

before the Truth and Reconciliation Commission justified my fear – these things had indeed been only the tip of the iceberg.

Everybody was hoping that with the inauguration of our new democratic state in 1994 things would change for the better, but, alas, things seem to have changed for the worse, or does it only seem worse because we now have more transparency? Public corruption is at an all-time high. It is for this reason that our present generation of teachers of Public Administration and Management, Political Studies and other related subjects should realise that something must be done to combat the spate of incidents of public corruption in our country. There is no short-term solution. A long-term strategy of teaching and educating a new generation of public officials and politicians is needed. Universities, technikons and colleges should include in their curricula and syllabi a module on “ethics and professionalism“. The obligation to develop a future generation of moral public officials and politicians rests squarely upon their shoulders. I have done my part by offering this book as basis for teaching students the fundamentals of ethics and professionalism and to educate them to become human beings with integrity.

For those academics who are afraid to criticise public corruption in their teachings and who want to be politically correct, I wish to bring them the following message from Dr Mamphela Ramphele, former Vice-Chancellor of the University of Cape Town: “There is a disturbing culture of silence in the country that, if not dealt with, will negate the gains of our infant democracy. There were a lot of academics that spoke out fearlessly about the evils of apartheid. Where have they disappeared? Their conspicuous silence since the advent of democracy has been disturbing.” Those academics who refrain from criticising what is wrong contribute nothing to improve our world. We must wake up and defend our infant democracy. Dr. Ramphele also said, “Those who are not prepared to defend democracy should not be entitled to its benefits”. My challenge to you all is to stand up and defend our infant democracy by teaching ethics and professionalism, without fear, favour, bias or prejudice, with neutral academic objectivity and integrity, in order to create a new generation of politicians and public officials with integrity and high moral standards. You indeed have an obligation to assist our State President and his government to eradicate public corruption in South Africa.

A new feature of this publication is the many quotable quotes cited at the appropriate places but not forming part of the text. They are relevant and should be carefully contemplated for their wisdom within the specific context of the key concepts of this book.

I wish to thank my dear wife for all the hard work she has done, i.e. for all the painstaking research on the Internet and other sources for the latest developments and thinking on the subject matter. I also wish to thank her for serving as my soundboard, for the reading and editing of the manuscript and for her sound comments and recommendations. This book is really a team effort by the two of us. Without her much-appreciated help this book would not have been completed. It is our combined contribution towards building a better South Africa for all its inhabitants.

**J.S.H. Gildenhuys**

11 November 2003

## PROLOGUE

*The government consists of a gang of men exactly like you and me. They have no special talent for getting and holding office. Their principal device to the this end is to search out groups who pant and pine for something they can't get, and to promise to give it to them. Nine times out of ten that promise is worth nothing. The tenth time it is made good by looting A to satisfy B. In other words, government is a broker in pillage, and every election is a sort of advance auction sale of stolen goods.*

**H. L. Mencken**

This quote from Mencken<sup>1</sup> does not really flatter politicians and public managers. But this kind of scorn, although unfair to the majority of politicians and public managers, is typical of some critics of political and public administrations. However unfair it may sound, it is not wrong to state that some politicians and some public managers, through their immoral and unethical conduct over the years, have created such negative perceptions about the government and their colleagues. One must always bear in mind that perceptions define reality in the minds of the people. It takes only a few flies in the ointment to spoil the whole lot. It seems that since the beginning of the 1990s a flood of public corruption has hit not only South Africa but also the rest of the world – it is a global phenomenon. This caused a worldwide upsurge of concern among the public about the ethical conduct of their governments.

Interest in the ethics of the public sector derives from the existence of what can be called a moral-ethical public culture. It is also true that government as well as public administration and management have become more complex in modern times. New problems and interest groups have come into being. Today politicians and public officials are sometimes confronted with having to make difficult, complicated and delicate decisions, which has led to a new focus on the moral-ethical aspects of public administration and management. What clearly makes the issue of ethics in the public sector (as opposed to the private sector) so acute is that it is so much in the spotlight. This is precisely why we speak of the public sector, which is the space in social life that is by definition exposed to the public – its interests, claims and rights. For this reason the public makes considerably higher moral-ethical and other demands on the public sector officials and politicians than they do of those in the private sector.

Whatever his job, whatever level of the public sector (national, regional or local) employs him, the public servant finds himself in a very special situation to serve not only the government, to which he owes obedience and duty, but also, and above all, to

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1 Henry Louis Mencken was one of America's most renowned journalists of the Second World War period. His perceptions were based on his experience with American politicians. He was very outspoken. His comment on Franklin Delano Roosevelt, 32nd President of the USA was: "He had every quality that morons esteem in their heroes. He was the first American president to penetrate the real depths of vulgar stupidity. He never made the mistake of over-estimating the intelligence of the American mob. He was its unparalleled professor."



serve the people of his country. To serve the people requires complete loyalty to the democratic principles and fundamental human rights, which have been enshrined in the Constitution. It also requires careful attention and constant dedication in his daily work to the never-ending needs of the country's citizens. The public servant's situation is also special because of the authority conferred upon him, especially because of the way he is expected to set an example. The image that people will have of the integrity, effectiveness and efficiency of the public servants will colour their perceptions of the state. What applies in this instance to public servants also applies to elected politicians and political office-bearers (ministers); they are all public officials supposed to serve the public.

*A country that allows corruption to take over loses its soul.*  
**Beyers Naude, on SABC 2, 5 September 1999**

Unethical conduct in the form of corruption and maladministration in the public sector is a global phenomenon and a very serious public disease. Since the early times governments all over the world have battled with public corruption. South Africa is not free from these evils. In 1991 I wrote that "Many instances of maladministration and corruption (in the public sector) surface from time to time and the number of instances that have occurred over the past decade or more cause grave concern. The concern is that what has been exposed lately could only be the tip of the iceberg".<sup>2</sup> It was indeed only the tip of the iceberg. Something is rotten in the government and public administration of South Africa. There is disrespect for the law and a culture of entitlement has developed. The many horror stories of atrocities committed by the security forces that unfolded at the hearings of the Truth and Reconciliation Commission; the multitude of reports and allegations of crimes committed by police officers and public officials; reports on politicians and civil servants committing fraud and being engaged in semi-fraudulent activities; convicted murderers and other criminals released from prison now serving in parliament; politicians obtaining drivers licences in an irregular way; reports by the Auditor-General's office on serious maladministration and the waste of public money, are all examples of unethical and immoral conduct by politicians and public officials.

*Bureaucracies are designed to perform public business. But as soon as a bureaucracy is established, it develops an autonomous spiritual life and comes to regard the public as its enemy.*  
**Brooks Atkinson**

There was a time during the rise of Communism when Lenin said: "All concepts of morality must be subordinated to the interest of the class (political) struggle." Legal and illegal methods must be combined to overcome any difficulties. The goal justifies the

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2 Gildenhuis J. S. H. (ed.), 1991, *Ethics and the Public Sector*, Juta, Cape Town, p. 2.

means! Stealing, lying and killing were right if they advanced the political struggle. For years South Africa has been in a similar situation. Very often South Africans' concepts of morality have been subordinated to the interests of apartheid or the anti-apartheid struggle. These have become the issues of the day rather than honesty and integrity. The political and ordinary human rights of the majority of the population have been denied. The majority of South Africans really had no future and feared for their lives. Political opponents of the ruling party have been hunted down, detained without trial, tortured inhumanely, brutally murdered and their bodies disposed off in extremely gruesome ways. A national church organisation's building was bombed at the command of a cabinet minister.

Bombs were planted by so-called "freedom fighters"<sup>3</sup> and innocent civilians killed. Suspected *impimpis*<sup>4</sup> were gruesomely killed by the "necklacing" method<sup>5</sup>. Instead of being urged to study, school children were mobilised for the struggle against apartheid, instigated to riot and stone to death those suspected of collaborating with the apartheid government. School children were taught to burn down motor vehicles, public buildings and their own schools. "Liberation before education!" was the slogan of the day. Children were used as shields in riots and political upheavals and many of them were indiscriminately killed by the security forces.<sup>6</sup>

Not much has changed since the demise of apartheid. Public buildings and schools have until recently still been burned down in political protest actions. Police officers are being murdered and commit suicide at an alarming rate per month. School children stoned to death an innocent town councillor, mistaken for someone else. Until recently students still rioted in the name of so-called "lack of transformation" at our tertiary learning institutions and caused severe damage to public property. Newly elected town councillors and three others in KwaZulu-Natal were gunned down allegedly by two policemen of the VIP Protection Unit from Gauteng. Political opponents still murder each other at an alarming rate. Counterfeit passports and identity documents are allegedly being issued to alien criminals entering the country. The unemployed regard robbing, stealing and looting as necessary for survival. Drug-peddling, smuggling, hijacking of motor vehicles, accompanied by the brutal murder of the owners, highway robbery and other related crimes have become thriving businesses, with some senior police officers allegedly being part of the most notorious crime syndicates. Gunning down rivals and burning their taxis, killing innocent passengers in the process, have become ways of settling business disputes in the taxi industry. The list of crimes committed is almost inexhaustible.

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3 Members of MK and APLA – trained as rebel soldiers of the ANC and PAC, respectively.

4 Informers to the police regarded as traitors.

5 A method of killing by putting an old motorcar tyre soaked with petrol around the neck of a handcuffed victim and then setting it alight.

6 For more information on the gruesome atrocities committed, consult the reports of the Truth and Reconciliation Commission.

*Criminals are going to cost this country much more than apartheid did.*  
**Dr Ike Ntsikelelo Nzo. Sunday Times 10 June 2001.**

In a recent internationally broadcast programme on DSTV, the city of Johannesburg was referred to as the crime capital of the world and South Africa as the most violent country outside a war zone in the world. The general public perception is that crime and corruption are out of control. As Plato said many centuries ago: “Where there is crime in society, there is no justice”.

*Only the mentally blind would fail to see that the things that happen in our country everyday point precisely to this – that among many of our fellow citizens there is no ethical barrier which blocks them from actions that are wrong.*  
**Thabo Mbeki, National Anti-Corruption Summit, April 1999**

Public corruption is at an unprecedentedly high level. It has become a flourishing and thriving business. Recent news reports have it that the Special Investigating Unit is investigating 8 senior magistrates for alleged corruption amounting to R38 million.<sup>7</sup> In November 2000 the Special Investigating Unit was engaged in investigations into approximately 100 organs of state said to involve 221 580 cases. The investigation extends over all nine provinces and includes 12 national investigations. Very substantial amounts of money, totalling about R3 billion, are said to be at stake.<sup>8</sup> The Police Service’s Anti-Corruption Unit is investigating more than 3000 police officers on charges of corruption.<sup>9</sup> The government has set up a special unit to investigate corruption in the justice system – including the Courts, the Police Services and the Department of Correctional Services. Transparency International rated South Africa number 48 down the line of the most corrupt countries in the world on its 2003 Public Corruption Perception Index, as against number 24 in 1996 – South Africa scoring only 5 points out of ten.<sup>10</sup> According to a recent statement by the South African branch of Transparency International, about 50% of South Africans are perceived to be corrupt by the international community.<sup>11</sup> The loss of cash through corruption by the South African government has increased from “a tiny fraction of 1%”<sup>12</sup> of the government budget in 1990 to more than 15% in 1998. At a recent Anti-Corruption

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7 *Rapport*, 5/12/1999.

8 Constitutional Court of S.A., Case CCT 27/00.

9 SABC 3 News Bulletin, 7/1/2000.

10 <http://www.transparency.de/documents/cpi/index.html> Although this Index is based on perceptions and not on hard empirical facts, it is something no South African can be proud of.

11 <http://news24.com>, 27/10/99.

12 Wronsley R. P. (former Auditor-General), 1994, “Controlling Corruption” in *SAIPA, Journal for Public Administration*, Vol. 29 No. 1, March 1994, p. 14.

Conference the National Director of Public Prosecutions, Bulelani Ngcuka, said that corruption in South Africa has reached “epidemic proportions” and that the urgency of addressing the problem and creating mechanisms to combat it could not be underestimated.<sup>13</sup> Mr Ngcuka also said that the South African Public Works Department, headed by Minister Stella Sigcau, was the most corrupt department in government. A recent survey among civil servants conducted by Business Against Crime found that 79% of all civil servants in South Africa are of the opinion that the civil service as a whole was corrupt and 70% thought that not enough was being done about it.<sup>14</sup> No civilised South African citizen in his or her right mind can ever be satisfied of this situation. This increasing rate of corruption in the public sector prompted the government to set up the Special Investigating Unit to investigate corruption in the public sector. At least one can take it that the government of Nelson Mandela was serious about combating public corruption.

*Corruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedom. They are the antithesis of the open, accountable, democratic government required by the Constitution.*

**Justice Arthur Chaskalson, President of the Constitutional Court**

The latest uproar in South Africa revolves around the allegations about a R43 billion arms deal by the government and the strange way it has been handled. Allegations of kickbacks to government officials hit the headlines of the news media on a regular basis. The Standing Committee on Public Accounts, on considering a report from the Auditor-General on the matter, requested the President to appoint the Heath Special Investigating Unit to investigate, together with the Public Protector, Auditor-General and the National Director of Public Prosecutions, the allegations in this regard. Strangely the President refused to appoint the Heath Investigating Unit to investigate the matter on the assumption that the Constitutional Court had declared the Special Investigating Unit unconstitutional. This raises the question why? Has the government something to hide? It places a question mark behind the integrity of the government. If they have nothing to hide, why fear the Special Investigating Unit? In the meantime the government has succeeded in getting rid of Judge Heath as Head of the Investigating Unit on a technical point of constitutional law. One may well ask: is the Mbeki government really serious about combating public corruption? Yes, the government is apparently serious about it, because the government appointed the

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13 The Mail and Guardian 26 October 2000.

14 Ibid.

National Director of Public Prosecutions<sup>15</sup>, the Auditor General and the Public Protector to investigate the arms deal. But why exclude Justice Heath and his Investigating Unit? Remember that perceptions create the realities in the minds of people. These allegations must be cleared, because we all want to be proud of our new democracy, our president, our government and our civil service.

*Imagine not that I am spinning yarns,  
Get up and prove the contrary!*

**Johann Wolfgang von Goethe**

Corruption and fraud subvert the national order. Corruption has the potential to undermine good governance and wealth creation. Corruption has a debilitating and widespread effect on development and business ethics. If South Africans are serious about building a new society, a resolute battle has to be fought for the moral foundations of that society. A corrupt public sector has no moral ground to fight corruption in the private sector. Thus the battle must start with the public sector. The few flies in the ointment must be picked out and burned to ashes. If the public sector is corrupt the whole society will tend to be corrupt, because the public sector sets the example.

*Corruption is probably the single major factor impeding private sector investment and growth.*

**Vicki Harris, Chairman of Global Corporate Governance Forum**

It would, however, not only be unfair but grossly irresponsible to conclude that all politicians and all public officials of South Africa are corrupt. On the contrary, the majority of our politicians and public officials are honest, hard-working people with high moral values and ethical standards in their conduct. Unfortunately the public at large needs only a few isolated examples to stereotype the “typical” politician and public official, with the result that if a few are corrupt the general perception is that all are corrupt. Unfortunately South Africa has more than just isolated examples of corrupt public officials and politicians. It is therefore not strange for the public to stereotype professional politicians as unprincipled, power-hunger, political opportunists without any integrity, and public officials as selfish, greedy and immoral persons whose only aim is to enrich themselves at the expense of the taxpayers. This is really an unfortunate public perception.

The challenge is to build a new public sector consisting of politicians and public officials who have integrity and high moral standards. It was this challenge that sparked the idea of writing this book on ethics and professionalism in the public

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15 The National Director of Public Prosecutions is compelled by the Constitution to investigate alleged corruption by politicians and to report to the President; the President in turn must report to Parliament on the findings of the Director. Let us hope that the present investigation will clear the matter and if there is any evidence of corruption that the culprits will be charged in court.

sector. It is of almost no use targeting the present generation of politicians and public officials. Those with integrity and high moral standards need no education in ethics and professionalism. Those without cannot in all probability be rehabilitated. If you are born and brought up as a crook without integrity and high moral standards, nothing will change you. These are the flies in the ointment that should be picked out and burned to ashes.

*Some persons are likeable in spite of their unswerving integrity.*

**Don Marquis**

The battle for building a new moral public sector will be a long and difficult one, as it is a long educational process. The right group to target for this education is young people. If young people are not taught what is right and what is wrong (in a way that makes sense and that they can understand), then society becomes a dangerous place to live, work and play. The young must be educated to become the future politicians and public officials with integrity and high moral standards. The ancient Greek philosopher, Socrates, once said that virtue is knowledge; people will be virtuous if they know what virtue is; and vice or evil is the result of ignorance. Thus, according to Socrates, the right education can make people moral.

*Goodness without knowledge is weak; knowledge without goodness is dangerous.*

**Paul Tillich**

One can only hope that time will be on our side in this tremendous and challenging effort. This book therefore targets all students in the Social Sciences and related studies at our colleges, technikons and universities. Teachers and students must always remember that the greatness of a nation is a function of the standard of its education.

It is against this background and these objectives that the contents of this book have been planned. The book starts with an explanation of the meaning of ethics. The following three questions will be discussed in Chapter One: What is ethics? What is its relevance to society? What is its importance for politicians and public officials? Chapter Two deals with the values forming the basis of ethics. Ethics does not apply to everything that exists, only to human beings and to every aspect of their lives: their character, their actions, their values, and their relationship to all of existence. Morality defines a code of values to guide people's choices and actions – the choices and actions determining the course of their lives. It is against this background that a code of values forming the basis of ethical conduct in the public sector will be discussed within the framework of political, economic, social and religious values. Corruption and maladministration are the result of immoral and unethical conduct by politicians and public officials, who ignore the public's values and human rights. Therefore political, administrative and criminal corruption and their manifestations will be explained and discussed.

*Our progress as a nation can be no swifter than our progress in education.*  
**John F. Kennedy**

A possible cure for immoral and unethical conduct in the public sector, and the prevention of corruption and maladministration, is to create a culture of public professionalism. The purpose here, therefore, is to explain and discuss the nature of professionalism and whether or not there is a need for the licensing of professions in the public sector. The foundation on which professionalism is based is a code of conduct. Codes of conduct may be contained in bills of human rights, public law, legislation of all kinds, and in-house rules of professional bodies. The nature and value of these various kinds of codes of conduct are explained and discussed.

If professionalism is paramount to moral-ethical conduct in the public sector, certain criteria should be applied in creating the ideal civil service model. The criteria conforming to the values explained for creating the ideal civil service model will be identified. Various civil service models will be described and evaluated against these criteria. The following models will be explained and evaluated: the spoils system, the political activist model, the scientific bureaucratic model and the professional public management model. The cabinet model of political executives (ministers) will also be explained and evaluated.

Because of the fallibility of human beings (and naturally therefore also of the politician and public official), corruption and maladministration will to a certain extent always be present in the public sector. Rules should therefore exist not only for preventing immoral and unethical conduct, but also to combat any misconduct by politicians and public officials. There are several public institutions entrusted with this function; some of these will be discussed.

The news media also play an important role in exposing public corruption. It is therefore important that the role of the news media in combating corruption should also be explained.

# CHAPTER ONE

## THE MEANING OF ETHICS

### Study goal

The purpose of studying this chapter is to understand what ethics and morality mean and to understand the relationship between metaethics, normative ethics, religious ethics, social ethics, personal ethics and professional ethics. It is also necessary to understand the importance of ethics for the public official as well as the dilemma a public official can face in attempting to distinguish between right and wrong.

### Study objectives

After studying this chapter the student must be able to explain in his/her own words the following:

- The meaning of ethics and what ethics is not about;
- The relationship between metaethics, normative ethics, religious ethics, social ethics, personal ethics and professional ethics;
- The importance of ethics to politicians and public official;
- The dilemma of the public official in differentiating between what is right and what is wrong.

## INTRODUCTION

Ethics represents principles or standards of human conduct, sometimes called morals, and by extension the study of such principles is called moral philosophy. Ethics and morality, therefore, belong to the study of philosophy. They are two philosophical concepts that deal with what is good and what is bad; what is right and what is wrong; and what is acceptable and what is not acceptable. Since the times of the ancient moral philosophers of centuries before Christ<sup>16</sup>, there has been a continuous philosophical discourse on the meaning of ethics and morality. Contemporary moral philosophers are still debating the issues in language that is almost incomprehensible for us laymen to understand. Their arguments are tainted with philosophical terms and phrases that sound strange to the ordinary person. Sometimes these debates seem to be nothing more than a war of words, sometimes based on logical reasoning and sometimes not, fought between philosophers in their ivory towers far above the reach of ordinary people. It is, therefore, not the purpose of this publication to join the contemporary

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16 Philosophical discourse on ethics and morality is recognisable in the intellectual traditions of ancient Greece – that is the time of the pre-Socratics and later Socrates, Plato and Aristotle, who lived more than two millennia ago.



philosophical discourse on ethics and morality, but rather to try and explain it in simple comprehensible terms – if that is ever possible. Always remember that in public life there is nothing more dangerous than ignorance and there is nothing more frustrating than arguing against ignorance.

The purpose of this chapter is briefly to answer the questions: What is Ethics? What is its relevance to society? What is its importance for politicians and public officials? Furthermore, it attempts to explain the dilemma that the politician and public official may face in trying to distinguish between good and bad; right and wrong; and between what seems to be acceptable but is indeed bad, wrong and unacceptable.

### WHAT IS ETHICS ABOUT?<sup>17</sup>

*Moral philosophy is hard thought about right action.*  
**Socrates**

ethics is the science of morals in human conduct. It is that branch of philosophy concerned with the study of the conduct and character of people. It is the systematic study of the principles and methods for distinguishing right from wrong and good from bad. The word “ethics” is a translation of the Greek word “ethikos”. Morals and ethics are not the same thing. The word ethics refers to a set of moral principles. Morals are defined as “custom” or “folkways” that are considered conducive to the welfare of society and so, through general observance, develop into the force of law, often becoming part of the formal legal code – a set of moral principles. Morals are made by humans in their quest to control their environment. Morals are codes for survival of the individual, the family, the group and society. Morals are common sense guidelines for happier living, while ethics can be defined as the study of a moral code and the decisions one makes in one’s relationships to others. Morals should be defined as a code of good conduct laid down on the basis of experience to serve as a uniform yardstick for the conduct of individuals and groups. Ethics is a personal thing. Ethics cannot be enforced. Morals can be enforced, as they tend to become the law of society.<sup>18</sup> Morals are actually laws. Ethical conduct includes adherence to the moral codes of society in which we live.

*Thus, to me, ethics is nothing else than reverence for life. Reverence for life affords me my fundamental principle of morality, namely, that good consists of maintaining, assisting and enhancing life, and that to destroy, to harm or to hinder life is evil.*  
**Albert Schweitzer**

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17 Based on the article on *Ethics* by Marcus G. Singer in *Grolier Encyclopaedia*, Grolier Electronic Publishing, Inc., undated.

18 Ayash, Barbara, 1999, personal e-mail communication, 14 January 1999.

Ethics has various interconnections with other branches of philosophy, such as metaphysics (the theoretical philosophy of being and knowing – the philosophy of mind), realism (the study of reality) and epistemology (the study of knowledge). This may be seen in such questions as whether there is any real difference between right and wrong and, if there is, whether it can be known.

Ethical inquiry over the centuries has revealed uncertainty about and conflict of opinions on what ought to be done and what ought not to be done. It has sometimes demonstrated the painful consequences of an action that earlier seemed perfectly acceptable but no longer complies with modern moral norms. It creates an awareness of differences in norms and practices among different societies. All these experiences give rise to practical questions: What should I do? Is this policy or action fair? It also gives rise to theoretical questions such as: Are any of these standards and norms (values) really right or are they arbitrary? What does it mean to say that something is right or good? What makes right actions right and wrong actions wrong? How can disputes about moral questions be resolved? It is the task of ethics to answer all such questions.

### **Metaethics**

An important distinction within ethics is that between normative ethics and metaethics. Metaethics attempts to determine the meanings of normative terms, such as right, good, ought, justice and obligation, to ascertain their interconnections and to establish whether any of these concepts are fundamental. It also attempts to analyse the nature of moral judgements and to determine whether they can be true or false. It is a question of whether “what ought to be” can be deduced from “what is” and what the relation is between facts and values. Can values be deduced from facts? The question at issue is whether it is possible to analyse moral concepts and judgements without at the same time presupposing moral beliefs.

### **Normative ethics**

Philosophical ethics is often called normative ethics as distinguished from descriptive ethics. Descriptive ethics is a department of empirical science that aims to discover and describe what moral beliefs are held in a given culture or society – normally the study field of Sociology. Normative ethics aims rather to prescribe. It searches for norms (values), not in the sense of what is average and therefore normal, but in the sense of authoritative standards of what ought to be. Among the questions of normative ethics are the following: What makes right actions right? How can we tell what is right? Why should I be moral?

### **Religious ethics**

One of the main problems of moral philosophy is the connection between morality and religion. Religious moralists tend to claim that there can be no morality without religion, because without God there can be no reason to be moral. Some philosophers deny this, while some hold that religion rests on morality since religion itself depends on the distinction between good and evil, which is an ethical concept. The problem, of course, is to determine which religious values moral conduct must be based on.

## Social ethics

Some philosophers distinguish between personal ethics and social ethics. Personal ethics is concerned with how one should behave in relation to oneself, and social ethics on how one should behave in relation to others. Some philosophers consider the questions of social ethics to be closely related to those of political and legal philosophy. A paramount question in this regard is that of the justice of the social/political institutions, especially the law – the theory of justice. This theory is concerned with the nature of a just law, whether one has a moral obligation to obey a so-called unjust law, and whether law itself can be defined independently of morality. Another question here is whether morality can be legislated, an issue which arises in disputes over racial integration or segregation (for example apartheid) and over legal restrictions on sexual relations (for example, homosexuality) and abortion.

## Personal ethics

*Everyone needs a philosophy of life. Mental health is based on the tension between what you are and what you think you should become. You should be striving for worthy goals. Emotional problems arise from being purposeless.*

**Victor Frankl (1970)**

Personal ethics refers to the individual's perception of right or wrong, based upon the system of values he believes in. Such a perception is, however, more than merely a personal opinion, because an opinion does not constitute an ethic. If the perception of right and wrong is to be a personal ethic, there must be a reference to some outside standard or agent. That means a set of generally accepted values, accepted as authoritative and acknowledged by a number of people, which can serve as a set of principles for personal conduct. A public official must, in other words, base his perceptions of right and wrong upon a standard that is generally recognised as such. Decisions based on religious doctrine are good examples.

Personal ethics is a reflection of a person's character. Character is made up of those principles and values that give your life direction, meaning and depth. These constitute your inner sense of what is right and what is wrong, based not on laws or rules of conduct but on who you are. They include traits such as integrity, honesty, courage, fairness and generosity – which arise from the hard choices we have to make in life. So wrong lies simply in doing wrong, and not in getting caught.<sup>19</sup>

Sometimes the basic view of success in a political career shifts to what may be called a "personality ethic". For instance, political success became more a function of charm, skills and techniques that, at least on the surface, lubricate the process of political interaction. Rather than struggle with thorny issues of right and wrong, politicians turn to making things run smoothly. Some of that philosophy expresses itself in harmless but superficial maxims such as "Smiling wins more votes than frowning". Other ideas were

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19 Covey, Stephen, "Why Character Counts", in *Reader's Digest*, March 1999, pp. 107-110.

clearly manipulative or even deceptive – faking an interest in possible supporters’ personal well-being so that they will like you, for instance. With a value system based solely on skill and personality, one may see powerful politicians as heroes. But despite the admiration we feel for these achievers, we should not necessarily look upon them as heroes. While skill is certainly needed for success, it can never guarantee personal happiness and fulfilment. These come from developing character.<sup>20</sup>

### **Professional ethics**

In recent years there has been a great resurgence of interest in normative ethics. One aspect of this is the attention given by scientists engineers, lawyers, physicians, journalists, public administrators, politicians and others to the ethical problems involved in the practice of their professions. Some of these occupational groups have formal codes of ethics, which determine the principles of conduct deemed appropriate to the special objects and responsibilities of their professions.

### **WHAT ETHICS IS NOT ABOUT**

The meaning of ethics may be understood better if one explains what ethics is not about. Many people tend to equate ethics with their feelings. Being ethical, however, clearly is not a matter of following one’s feelings. A person following his feelings may recoil from doing what is right. In fact, feelings frequently deviate from what is ethical.

Nor should one identify ethics with religion. Most religions, of course, advocate high moral standards. If ethics were confined to religion, then ethics would apply only to religious people. Ethics applies as much to the behaviour of the atheist as to that of the saint. Religion can and does set high moral standards and can provide intense motivations for ethical behaviour. Ethics, however, cannot be confined to religion, nor is it the same as religion.

Being ethical does also not mean simply acting within the confines of the law. The law – especially common (natural) law – often incorporates moral standards to which most people subscribe. But statute (positive) law, like feelings, can deviate from what is ethical – for instance the apartheid laws of the former South African government.

Being ethical is also not the same as doing whatever the society accepts. In any society most people accept standards that are, in fact, moral. But standards of behaviour in society can deviate from what is really moral. An entire society can become entirely corrupt. If being ethical were doing whatever the society accepts, then to find out what is ethical, one would have to find out what our society accepts as moral. Every public act and every public decision would then first to be subjected to an opinion poll before one could act or decide on public matters. The lack of social consensus on many public issues makes it impossible to equate morality with whatever society accepts. Some people accept and even demand the death sentence for murder, while others do not. Some are for and some are against abortion. If being ethical were doing whatever society accepts, one would have to find an agreement on issues, which does not, in fact, exist.

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20 Ibid.

In summary one may conclude that ethics determines human action according to moral values converted into generally accepted standards of conduct. It is the practical manifestation of morality. Morality is both a basic and a universal facet or dimension of our human existence, especially in the social and political context of social organisation. Morality primarily applies to human relations, to people's coexistence with their fellow human beings, to the way in which people conduct their associations and their dealings with other people in society. It serves to humanise our existence through humanising our coexistence with our fellow human beings; that is, through lessening the reciprocal harm and hurt to which we are so naturally inclined in our human relations. Morality strives for a certain level of integrity. Integrity entails loyalty to one's convictions and values, of expression, upholding and translating them into practical reality. It is the development of a sense for what is right and what is wrong. It is the human quality of possessing and steadfastly adhering to high moral principles or professional standards. However, it is not only concerned with loyalty to individual convictions and values – micro-ethics – but also loyalty to the collective convictions and values of society in which one operates – macro-ethics.

Micro-ethics is concerned with moral values and moral norms as values that apply exclusively to the personal relations within which we interact with others face to face. Macro-ethics is primarily concerned with the macro-structures of society that regulate the more objective and impersonal relations between people, in which they are involved on an anonymous basis and simply as role-players. Political structures, systems, procedures and public role-playing may also be morally good or bad. This is because they embody and are governed by normative ideas and principles which may promote and cultivate a greater humanity in people, but which may also corrupt and degrade them and affect their daily lives and relations in a dehumanising way. It is for this reason that a macro-ethics has become a matter of extreme urgency.<sup>21</sup>

To put it in more simple language: Ethics is two things. First, ethics refers to well-based standards of right and wrong, prescribing what human rights ought to entail. Ethics in the public sector, for example, refers to those standards that impose the reasonable obligations to refrain from criminal and administrative corruption and fraud. Ethical standards also include those that enjoin virtues of honesty, compassion and loyalty. It also includes standards relating to rights, such as the right to life, the right to freedom from injury and the right to privacy. Such standards are adequate standards of ethics because they are supported by consistent and well-founded reason.

### **THE IMPORTANCE OF ETHICS TO POLITICIANS AND PUBLIC OFFICIALS**

Moral norms do not have to do only with human beings as individuals, but include the network of public institutions, organisations and structures created by government. These government constructions are also subject to moral criticism as they can in fact

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21 H. W. Rossouw, 1991, 'Opening Address' in Gildenhuys J. S. H. (ed.), *Ethics and the Public Sector*, Juta, Cape Town, pp. 4-6.

function unjustly in society. This is why they may also be judged in terms of moral norms in order to determine whether their conduct is morally acceptable or unacceptable. Ethics and morality have an evaluative and regulative function. The same applies to the laws and regulations made by government. Laws and regulations also regulate human behaviour, both individually and collectively.

Laws and regulations are supposed to guarantee stability through the orderly conduct of public affairs. Yet laws and regulations do not necessarily guarantee political stability and public order, especially when the laws and regulations are not acceptable to the people. Laws and regulations alone cannot guarantee an orderly state of affairs; neither for that matter can weapons. It is primarily guaranteed by the kind of general consensus that exists on moral norms and values. Without this, an authentic and sound public life is actually impossible. The tendency by governments to regulate all kinds of things with laws and regulations is doomed to failure if it is not supported by a vital moral consensus on the kinds of norms and values, which should apply to the country and be expressed in public life.<sup>22</sup>

Ethics and morality are not only of importance for public officials (politicians and civil servants), but also of paramount importance for the institutions (parliament, cabinet and government departments) in which the public officials act. The importance of the moral-ethical may be interpreted in terms of the concept of “legitimacy”. Legitimacy is not the same as legality. It is related rather to the moral acceptability of government institutions, laws and regulations. This acceptability has to do with the following:

- the extent to which members of the public identify themselves with the aims and values of public policy, in the conviction that it complies with their own individual values and personal objectives;
- the extent to which they identify themselves with government institutions, in the conviction that these serve their interests, aspirations and rights;
- the extent to which they identify themselves with public officials, in the conviction that these officials may be trusted to see to their interests.

The erosion of legitimacy may lead to resistance and even violence, rebellion and revolution. This is when the state resorts to governing by force rather than authority.<sup>23</sup>

When an accepted moral-ethical dimension, as a basis of government conduct, is lacking, there may be an erosion of legitimacy, which is sometimes described as a lack of credibility among the public.

When applying the principles of ethics and morality to the problems of public corruption and maladministration, one must ask what is the condition of the legitimacy or moral acceptability of the government institutions that serve our society and its people? Corruption and maladministration and the wasting of money are not always due to the personal moral shortcomings of public officials. In certain circumstances they stem from problems experienced because of the erosion of legitimacy. This happens

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22 Esterhuyse Willie, 1991, “The Nature and the Role of Ethics and Morality in Public Life” in Gildenhuys J. S. H. (ed.), *Ethics and the Public Sector*, Juta, Cape Town, p. 10.

23 Ibid., p. 12.

when the public does not agree with the political objectives, moral norms and values of the particular government institution. This means that the state and public institutions are dependent on an acceptable moral-ethical basis for their continued existence. If this is not present, disintegration follows.<sup>24</sup>

Considering the importance of ethics for public officials, we must accept that today we live in a complex world where there is always a great deal of uncertainty about basic moral norms and values. Prescriptions controlling the conduct of public officials are very complex and public policy and management make much greater demands than before, which means that moral creativity and innovation are much more important in the public sector. Pressure by interest groups may mean that it takes a great sense of responsibility and morality not to succumb to this pressure but to take decisions that are in the general interest of the public.

At the micro-level of public administration and management, ethics relates to the individual public official, who usually operates within the middle or lower levels of the government organisation, and who exercises some authority and discretion, but whose influence does not extend far beyond his immediate surroundings. Decisions made by this type of public official have an impact on one's personal perception of dignity and worth, and they also have some impact on how effectively a division of the public organisation works. However, it is doubtful that the success or failure of the government organisation is greatly influenced, since government organisations often have built-in redundancies that guarantee overall success even though a single official fails in his mission. Therefore, the level of ethical consideration is relatively limited; it usually includes the values of the decision-maker and a recognisable set of factors surrounding the individual official and the situation. The spill-over or 'ripple effects' do not appear to continue outward interminably.

The ethical problems that these individual officials usually face are of three types. First, they may be assigned to carry out tasks that they consider to be wrong. Second, they may receive instructions from above to overlook wrong actions by someone else. Third, they may collect information that appears to be useful to the government organisation but is ignored by their superiors. Although these ethical problems may have an impact on the government organisation's policies, the primary conflict created is one between maintaining personal integrity versus conforming to pressure from superiors.

At the macro-level of public administration ethics, any decisions made by the individual are understood to have an impact on many people. These are usually policy decisions because of their impact on society. The ethical problems faced by policy makers are of two general types. First, their decisions may result in personal gain for themselves, or their friends and relatives. Second, their decision must be made in a social situation where it is impossible to use any of the optimising decision-making models. This second type occurs more often and is more difficult to deal with. Macro-ethical decisions are infinitely more complex because of the open-ended type of interactions that must be considered. Spill-over or ripple effects continue on an unlimited scale far into society. This means that it becomes almost, if not completely, impossible to comprehend

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24 Ibid.

what will be the end results or impact of a choice or a set of choices. Any choice on the macro-level has both negative and positive impacts. Whether the impact is negative or positive depends on the particular segments of society making the evaluations or on the timing of the evaluations. In such cases the decisions are much more difficult and complicated. In most cases the individual facing the ethical problem does not have the luxury of avoiding a choice – a decision must be made.

One must always remember that public officials are the “trustees” of the “public good”. This applies to all public officials (politicians and public servants) and is the basis of the kind of moral behaviour one can expect from them. An acceptance of the trusteeship of the “public good” has one important consequence: responsibility and accountability cannot be eluded or side-stepped.

*Government is like a baby. An alimentary canal with a big appetite at one end and no sense of responsibility at the other.*

**Ronald Reagan**

One of the most serious problems in recent times has been the ease with which responsibility for decisions taken and their consequences are shifted onto others. Scapegoats are sought elsewhere. The acceptance of collective responsibility does not exist. Ministers and other public officials no longer accept responsibility for poor or inadequate supervision over and management of subordinates. Resignation by ministers and senior officials, the convention in Britain, does not really occur. Frequently a subordinate is made the scapegoat and fired to save the face of a minister or director-general.

What needs to be emphasised is that the kind of ethical culture that prevails in the public sector depends on what society permits the public officials to get away with. Ultimately a society deserves the kind of public officials it gets. A society that does not register public moral protest and which does not value the maintenance of moral-ethical norms and values will be a society that has public officials without a sense of responsibility and integrity. In such a society, corruption and maladministration are general phenomena.

*Every society gets the kind of criminal it deserves. What is equally true is that every community gets the kind of law enforcement it insists on.*

**Robert F. Kennedy**

## **THE DILEMMA OF THE PUBLIC OFFICIAL**

S. X. Hanekom once wrote: “The reputation and success of government depend on the conduct of public functionaries and what the public believes about the conduct of such functionaries. It is, therefore, of fundamental importance that public functionaries should act justly and fairly to one and all, not only paying lip service to justness and



fairness, but also ensuring that these are manifestly and undoubtedly seen to be done. It is imperative that each public functionary, upon accepting government employment, to take cognisance of the fact that he has a special duty to be fair and impartial in his dealings with members of society. Personal self-interest should in all circumstances be subordinated to the public good, especially if circumstances arise where the possibility of a conflict of interest may become an ethical dilemma.”<sup>25</sup>

Some of the most common ethical dilemmas with which public officials are confronted, revolve around aspects such as:

- the use of administrative discretion and delegated decision-making authority;
- corruption;
- nepotism;
- secrecy and confidentiality;
- leaking of confidential information;
- conflict of personal and general public values;
- public responsibility and accountability;
- the dilemma of policy conflicts;
- the relationship between appointed public servants and political office bearers;
- the influence of interest and pressure groups;
- political party activities of public servants and;
- the public’s interest in the activities of public officials.<sup>26</sup>

Maladministration and corruption are among the most important manifestations of unethical conduct in the public sector. The public sector delivers services to the public. Some of these services are regulatory in character, while others are allocating values in terms of goods and services to, or taking away values from, private individuals. The consequence is that a private individual and a public official are always simultaneously involved in a particular deed of corruption. The initiative of acting corruptly may come from either side. One is, however, inclined to believe that the party who stands to profit most will take the initiative. The fact remains that public officials are sometimes under pressure from outside forces to commit some fraudulent action for the actual profit of an outside party. Temptation for self-enrichment by fraudulent action is also not excluded.

The problems of maladministration and corruption are ethical issues and the solution to these problems may be found in the precepts of ethics.

The dilemma of the politician and the public servant is to distinguish between what seems to be right but in effect is wrong. The dilemma of the public official is also to determine on what values and norms to base his ethical conduct. In a plural society with a diversity of cultures such as South Africa, this can pose a real problem. The public official’s real dilemma is to find the core or common values that will satisfy the demands of all groups to be served.

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25 Hanekom S. X. *et al.*, 1990, *Key Aspects of Public Administration*, Southern Book Publishers, Johannesburg, p. 151.

26 *Ibid.* p. 152.

To identify every possibility of conflict between right and wrong is perhaps beyond the ability of the average person. For example, the dilemma of the public official is to decide when gifts like Christmas presents, invitations to free hunting trips to private game farms and free fishing expeditions to Mauritius by a member of the public are bribes or sincere tokens of friendship and gratitude. These gifts from members of the public seem so innocent and sincere. Why should public officials not accept such gifts from thankful members of the public for the excellent services rendered to them? It all seems so well meant and in order! Business people refer to this as “buying goodwill”.

*One does not give a gift without motive.*

**Bambara (West African proverb)**

The truth is that no member of the public offers gifts to politicians and public servants without ulterior motives. One day they will come back and demand their quid pro quo from the deal. Bonds of special friendship are sometimes deliberately created and fostered for possible future benefits and profits, even if the friendship is used only for indirect contact with and influencing of political colleagues and other public servants for favours. So far I have not yet come across someone in the private sector who loves politicians and public servants so much as to present gifts to them without expecting a substantial quid pro quo in return. As far as the private sector is concerned, every politician and every public servant has a price. The higher the decision-making authority of the public official the higher the price, and the lower the authority the lower the price. Cabinet ministers and directors-general perhaps have higher prices and directors and assistant directors have much lower prices.

What public officials must realise is that they rate their own integrity as being equal to the monetary value of the gift accepted. What actually happens is that the presenter of the gift measures the value of your integrity in terms of the monetary value of the bottle of whisky he gave you as a Christmas present and loses complete respect for you in the process. He loses complete respect for you because you can be bought at a price! My advice to all public officials is never to negotiate their integrity and honour; they are too precious to squander.

## **SUMMARY**

The cause of corruption is not difficult to find. However, many apologists for corruption may cite poverty, underdevelopment, being underprivileged, being disadvantaged, being unemployed, etc. as reasons for engaging in corrupt activities. Being poor, underdeveloped, disadvantaged or unemployed is no justification to become corrupt. It is actually those who are employed as public officials, in other words the advantaged, who commit crimes of corruption. The truth is that the lack of morality and the prevalence of personal greed in society are the main causes of corruption. In the political world the hunger for political power and greed are the main causes of public corruption. Immoral human beings – no matter what their vocation, trades and traits are – tend to be corrupt. This is aptly phrased in the well-known

saying “Once a crook always a crook”. The lack of ethical conduct – the result of immorality – lies behind the present spate of corruption flooding the world.

*Let us nurture our arts, and not our corruption. Let us communicate morality, and not our vices. Let us advance science, and not our dogmas. Let us advance civilisation, and not abuse.*

**Thabo Mbeki, S. A. Parliament, March 1999**

The ethical dilemma is to distinguish between what is right and what is wrong, and what seems to be right but is indeed wrong. From time immemorial world-renowned philosophers have argued and written page upon page on what is right and what is wrong, and what is good and what is evil. This debate is still going strong. All kinds of ethics have been identified, but the most important one to understand is personal ethics. Personal ethics consists of those personal attributes of a moral person – a person with a conscience – a person with that little voice inside him telling him when he is doing wrong.

**Possible examination questions:**

1. Explain the meaning of ethics and what ethics is not about. (45 minutes)
2. Explain the relationship between metaethics, normative ethics, religious ethics, social ethics, personal ethics and professional ethics. (45 minutes)
3. Explain why personal ethics and professional ethics are so important to public officials. (20 minutes)
4. Explain the importance of ethics to politicians and public officials. (30 minutes)
5. Explain the dilemma of the public official in differentiating between what is right and what is wrong. (20 minutes)

## CHAPTER TWO

# SECULAR VALUES FORMING THE BASIS OF ETHICAL CONDUCT

### **Study goal**

The purpose of studying this chapter is to learn that values form the basis of morality and ethical conduct. Students must understand that certain constitutional, political, economic and social values are the principles on which the public official's conduct must be based. It must be understood that these values form the hard and fast rules serving as a framework for official conduct.

### **Learning objectives**

After studying this chapter the student must be able to explain in his/her own words the following:

- What good governance means;
- The rule of law, its origin and its meaning;
- Civil rights, civil liberties, civil obligations and civil obedience;
- The principle of equity;
- The principle of equality;
- The fact of inequality as manifested in natural inequality, moral or political inequality and inequality of wealth;
- Political principles securing ethical conduct;
- Economic principles securing ethical conduct;
- Public administration principles securing ethical conduct;
- Social principles securing ethical conduct.

## **INTRODUCTION**

Cultural decay is rampant. And no city or town is immune from the myriad of social problems that arise in the wake of widespread violence, crime, abuse, illiteracy and immorality. At the root of violence, crime, immorality and an unsafe environment is the lack of basic moral and ethical values.

Ethics does not apply to everything that exists, only to human beings and to every aspect of their lives: their character, their actions, their personal values and their personal relationship to all of existence. Ethics and morality define a code of values to guide people's choices and actions – the choices and actions that determine the course of their lives. A moral sense is traditionally a unique attribute of the human personality. The transformation from a solely biological organism to a socially responsible individual is the hallmark of the development of personality and is a shared social development necessary for viable human society. All morality consists of a system of rules and the essence of morality is to be sought in the respect that the individual acquires for these

rules. Values are enduring beliefs, or categorical moral standards, which an individual holds that relate to his or her life goals and modes of behaviour.

According to some philosophers there is an evident relationship between values and behaviour, although it has not yet been demonstrated that values cause behaviour. There is, however, speculation that attitudes may cause, or at least influence, behaviour. Attitudes are more superficial favourable or unfavourable responses to ideas, objects and the behaviour of other people. The social environment may also have an effect on the acquisition of moral awareness and on moral behaviour. It may also be true that moral performance is not always consistent with moral sentiments, but varies with the social context that either reinforces or undermines the moral performance of mankind.

Conscience also plays an important role in ethics and moral conduct. Conscience creates the capacity for moral judgement. It could be described as a moral sense, an intuitive faculty that operates through feelings of right and wrong. Conscience is reason applied to moral principles. It can also be explained as a kind of reasoning process that makes it possible to distinguish what is right from what is wrong. One of the tasks of ethics is to determine the nature and function of conscience and to explain why divergence exists, both within and between cultures in what conscience says one must do or not do. Conscience is that little voice deep inside you that tells you when you are doing wrong.

Every individual usually identifies with the group holding the same convictions and values as his own. The dilemma for the politician and public administrator arises when a diversity of social groups with divergent convictions and values to be served coexist in one country such as South Africa. Their task then is to identify the most common values in such a plural society to serve as a basis for ethical conduct. Following the so-called 'common values' of society pressurises the conscience when the values of those not falling within the common realm are ignored. What does one do about the values of the minority? If we take values to mean basic perceptions of the relative importance of elements constituting our existence, then these perceptions always have to do with priorities. Moral norms are the articulated forms of these priorities and function as regulative instances, which guide and measure attitudes and actions.

Any society may be more or less conscious of the basic values underlying the attitudes and actions of its members. This does not make them less important. These values determine how people will react to others, how they understand themselves and how they perceive and eventually shape reality. In an absolute sense, values are responsible for how we experience, accept, defend or change reality. All our actions and attitudes are therefore value-laden and no social system (for example, a political system) is neutral from a moral perspective – it can only be more or less justifiable or legitimate in terms of a specific set of norms.<sup>27</sup>

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27 Lategan, Bernard, 1991, "The role of values and norms in society" in Gildenhuys J. S. H., 1991, *Ethics and the Public Sector*, Juta, Cape Town.

The idea of so-called “common values” raises the question whether one can distinguish between “public values” and “private values”. Are there so-called commonly held “public values” that could form the norms for government actions? Then what about the so-called “private values” of individuals and social groups – in what way and how should these values be respected by government institutions? One sometimes hears about the so-called “public interest” as opposed to “personal interest”. Public officials frequently justify their decisions and actions, detrimental to the interests of some individuals or minority groups, as being in the public interest. Who defines this so-called “public interest” and on what norms is this definition based? Is it the collective interest of the political majority, ignoring the interests of the minority groups? Or is it serving the personal interests of the individual public official under the guise of the so-called public interest? These are all questions for which public officials must find answers.

*It would seem to me that many in our society are inspired by a system of values which begins and ends with the pursuit of what is materially necessary to themselves, with no sense of what is morally correct.*

**Thabo Mbeki**

It is against this background that an attempt will be made to identify a common code of moral values to serve as basic moral principles for ethical conduct in the public sector. This approach raises the dilemma whether moral values can be cited as moral principles. A principle is a fundamental truth or law forming the basis of reasoning or of action. Principles are fundamental. This means that they do not change for simple reasons. A principled person or government is one that sticks to the basic moral values in which such person or government believes. The moral values in which people or governments believe may differ; it depends on what ideology they support. However, there are certain universally common moral constitutional, political, social and economic values forming fundamental truths or laws of reason and action that have stood the test of time, and which have become accepted over the course of time as basic moral principles for good governance. Laws based on these principles will be accepted as moral and laws falling outside the realm of these principles will be regarded as immoral.

A second dilemma is how do public officials handle the private and personal values of individuals and groups falling outside the realm of the principles of good governance. The answer is that as long as they do not conflict with the common code of values, they should be respected. But what happens if they do conflict with the common code or principles of good governance? It is apparent that if they do so conflict, they are generally unacceptable and must therefore be ignored or acted against.

The purpose of this chapter is therefore to identify some common values that could form a code of principles for ethical-moral action by public officials. A distinction will be drawn between constitutional, political, economic and social values.

## **CONSTITUTIONAL VALUES**

### **The ultimate goal of modern government.**

The ultimate goal of modern government is to create a good quality of life for each and every citizen. The attainment of a good quality of life demands an environment that provides equal opportunities for each individual to develop, maintain and enjoy a satisfactory quality of life without threats and constraints from outside his or her personal and private environment. There are basic principles to which government must comply in order to meet these requirements. They are the principles of good governance.

### **What is good governance?**

Good governance means governing with people rather than ruling over people. In addition to the traditional government functions of control and regulation, good governance seeks to build partnerships with civil society. Its role is to facilitate, to enable and to promote, rather than simply to rule. This makes it a truly democratic process of government, where the individual's dignity, rights and needs are paramount. As already stated, good is a relative term. Philosophers in ethics have written page upon page on what is good and what is bad. It is not the intention here to enter into this never-ending philosophical debate. For the purpose of this publication, governance will be good when government attains its ultimate goal of creating circumstances for each and every citizen to obtain a good and satisfactory quality of life according to his personal mental and physical abilities.

## **CONSTITUTIONAL PRINCIPLES**

The constitution of a country provides the juridical framework for good governance. A constitution is a whole body of fundamental rules according to which a particular government operates. It is a nation's basic rules for governing itself. Constitutional rules establish and regulate the framework of government. It prescribes the following: the matters with which government may or may not deal; the specific government institutions that are to deal with them; the procedures that those institutions must follow; and the processes by which the members of the various government institutions are elected or appointed. Constitutional rules apply to more general and significant matters than does ordinary law and they also fix the limits of ordinary law. Any government actions falling outside the realm of the constitution are considered unconstitutional and may be regarded as immoral and unethical conduct.

Constitutionalism, on the other hand, is a particular set of ideals, competing with other ideals for people's loyalties, about the kind of constitutional rules a nation should have. Constitutionalism is the doctrine that the authority of government should be limited so that human rights are formally and in fact protected from abridgement by either public officials or private individuals. The antithesis of constitutionalism is totalitarianism. This means that there must be fundamental values that are fundamental truths or principles, supporting constitutionalism.

Among these constitutional principles one may cite the following:

## The Rule of Law

The basic constitutional principle of a real democracy, or what is termed the constitutional state (Rechtstaat), is the rule of law. The rule of law has its origins in English constitutional law. It is based on Bracton's words in the twelfth century: "Rex est sub Deo et lege" – that is, "The King is subject to God and the Law". This means that government and all public officials are subject to God and the Law. This principle (value) is the basis of the oldest English constitutional laws such as the 'Magna Carta' (Great Charter), 'Petition of Right', 'Habeas Corpus Act', 'Declaration of Right', 'Bill of Rights' and 'Act of Settlement'. All these enactments of earlier centuries in England were a reaction to the unethical conduct of the then rulers of England. They enacted (codified) civilised moral standards to serve as a code of ethical conduct for the rulers of England.

The well-known nineteenth-century English constitutional expert, Dicey, explained the meaning of the rule of law as follows:<sup>28</sup>

It means in the first place, the absolute or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else.

It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts; the rule of law in this sense excludes the idea of any exemption of officials or others from duty of obedience to the law which governs other citizens or from the jurisdiction of ordinary tribunals...

The rule of law, lastly may be used as a formula for expressing the fact that with us the law of the constitution, ... is not the source but the consequence of the rights of individuals, as defined and enforced by the Courts; that, in short, the principles of private law have with us been by the acting of the Courts and Parliament so extended as to determine the position of the Crown and of its servants; thus the constitution is the result of the ordinary law of the land.

The above explanation of the Rule of Law means that:

- the constitution is the supreme law of the country and that all other laws and actions of government are subject to the provisions of the constitution – this means that all laws and actions of state not complying with the constitution are ultra vires;
- all citizens, including elected representatives and public officials, are equal before the law and that every one of them is subject to all the laws of the country and should be treated equally in terms of the law – this means nobody, including even the head of state, is above the law;
- the executive institutions of government on all levels should neither be allowed to exercise discretionary authority that is too wide and unrestrained, nor should they be allowed to act arbitrarily;

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28 Strong C. F., 1966, *Modern Political Constitutions*, London, Sidgwick & Jackson, p. 282.



- the courts should function independently of the legislature and the executive; and judges and magistrates should act as independent public guardians to ensure that government and public officials respect the rights and freedom of the individual.

### **Public justice**

Closely related to the rule of law is the concept of justice. Justice implies fairness and reasonableness. Fairness and reasonableness form the basis of a just society and a just government. To be fair is to be just, unbiased and equitable in one's dealings with other people. For the public official this means acting within the confines of moral rules. To be reasonable is to exercise sound judgement and being ready to listen to reason in one's interactions with members of the public. It is to use one's mind and act according to reason; in other words to comply with the concept of justice. Justice can only be based on moral values and is largely a subjective matter – one person's idea of justice is never exactly that of another person, but when it is based on generally accepted common moral values, one can arrive at a definition of public justice. Public justice is reflected in the just application of legitimate laws and rules based on these generally accepted common moral values.

The meaning of social justice can be summarised as follows:

- Justice is a moral value based on fairness and reasonableness;
- Justice represents two different aspects: formal or procedural and substantive or substantial; and
- Justice is also a legal virtue.

Legal virtue involves formal justice. Formal justice is the accurate and consistent application of a system of legitimate laws and rules. This implies that laws and rules must be laid down indicating how people are to be treated. The laws and rules must be generally applicable to all categories of persons. They should also be applied impartially by the relevant public organisation or agency to all those falling within its ambit. Substantive justice focuses on the substance of the laws and rules. These laws and rules must be legitimate and based on moral values that are compatible with standards of fairness and reasonableness.

*Equality in justice is justice.*

**Egyptian proverb**

To ensure that fairness and reasonableness (i.e. justice) will prevail, public officials should apply the legitimate laws and rules justly, so that every person and private institution can derive the maximum benefit from such laws and rules. When discretion has to be exercised in applying laws and rules, this should be done in such a manner that the individual or institution always receives the benefit of the doubt.

Such a desirable state of affairs will largely be achieved if the rule of law prevails. In a civilised community fairness and reasonableness in public administration are guaranteed not so much by the judgements given by the courts, as by the attitudes

displayed when public officials perform their duties. A public official will be guilty of unfairness and unreasonableness not only in those cases where he/she is brought before a court and found guilty, but also in every case where he/she had failed to ensure that justice was done. Fairness and reasonableness will rather be ensured by public officials who display integrity in their dealings with the public than by strict control measures and penal provisions in laws and/or regulations.<sup>29</sup> In cases of litigation justice must be seen to be done. Every case, criminal or civil, guilt or liability must be proved beyond reasonable doubt; if this is not possible then the accused or defendant must be given the benefit of the doubt. This should also apply to ordinary day-to-day administrative decision-making on matters concerning the public.

*Decision-making is easy if there are no contradictions in your value systems.*  
**Robert Schuller**

### **Civil rights, civil liberties and civil obligations**

Every person in the world has his own private self. The very core of a person's existence is that everyone has some identity that is truly his or hers alone. Yet each lives in a world of other people and other identities. We learn very early in life that a good deal of what other people say and do impinges on and limits what we say and do, and vice versa. The basic problem of people living together in one society is how best to adjust the expressions of their identities with the identities of others. This basic problem of people-in-society gives rise to a prime problem that every government confronts. How much, in what ways, and under what conditions may government legitimately limit the expressions of and invade the privacy of individuals in order to promote its ultimate goal? This question brings the moral principles of civil rights, civil liberties and civil obligations to the fore.

*No man is entitled to the blessings of freedom unless he be vigilant in its preservation.*  
**Douglas McArthur**

### **Civil rights**

Most people associate 'civil rights' with 'freedom'. What then is freedom? Originally to be free was not to be a slave, to have legal guaranteed control over one's own person and this is still the essential meaning. To be free is not to be prevented from what one wants to do and not being forced to do what one does not want to do. Any limitation of this two-fold personal power is an interference with personal freedom, however excellent its motives, however necessary its actions. Freedom in this sense does, however, not mean that an individual may disobey the legitimate laws of the country. Individuals cannot be free without laws. Freedom must be exercised within the confines of a country's laws and only through obeying such legitimate laws can an individual enjoy his natural freedom.

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29 Cloete J. J. N. 1981, *Introduction to Public Administration*, J. L. van Schaik, Pretoria. p. 28.

*The cost of liberty is less than the price of repression.*  
**W.E.B. DuBois**

John Locke wrote many years ago that the end of law is not to abolish or restrain, but to preserve and enlarge freedom. In all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; this cannot be where there is no law; and it is not, as we are told, a liberty for every man to do as he wishes. It is rather a liberty to dispose, and order as he pleases, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and not to be the subject of the arbitrary will of another, but freely allowed his own.<sup>30</sup>

What kind of freedom, then, is a civil right? For the purpose of this study the term is used to mean a constitutionally defined and governmentally protected area of freedom for individuals. The emphasis is on the freedom of the individual and not on that of social groups vis-à-vis other social groups in the same society. Liberty is the right to choose. Freedom is the result of the right choice.

Civil rights fall into two general classes, namely limitations on government and obligations of government. Limitations on government are things that government is forbidden to do to the individual in order to preserve those opportunities, the absence of which would deprive the individual of something essential to create a good quality of life. Obligations of government are a series of duties that government is obliged to perform for the individual to preserve those liberties without which the individual cannot create a good quality of life for him, or what is needful for the adequate development and expression of his personality.

This liberal philosophy of the civil rights of the individual is based on two propositions. First, civil rights are ends in themselves and their preservation is the main function of government and also the main reason for a government's existence. Second, civil rights are indispensable means for the creation and maintenance of a good quality of life by each individual for himself or herself.

### ***Civil rights as ends***

Nearly all those who argued and fought for civil rights over many centuries did so out of deep commitment to the proposition that civil rights are ends in themselves. John Locke in his *Two Treatises of Civil Government* raised the central question: "Under what circumstances and for what reasons should men obey the commands of government?" The answer, he argued, must be based on the fact that men join together in civil societies and establish government for only one reason: to secure more firmly the personal rights to life, liberty and property that naturally belong equally to all men simply because they are human beings. Locke goes on further to explain that "Whenever the legislators endeavour to take away or destroy the rights of the people

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30 Ebenstein William, 1966, *Great Political Thinkers, Plato to the Present*, New York, Holt, Rinehart & Winston, pp. 384 et sec.

... they put themselves into a state of war with the people, who are thereupon absolved from any further obedience, and have the right to resume their original liberty, and by establishing of a new legislative (such as they shall think fit) to provide for their own safety and security, which is the end for which they are in society.”<sup>31</sup>

*The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, and resistance to oppression. Any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all.*

**The French Declaration of the Rights of Man (1789)**

All liberal philosophers believe that any government that abridges the people's rights thereby violates the law of nature and loses all moral claims to obedience from citizens. Securing the rights of the individual is the paramount purpose of any government, because it is what God or the law of nature commands. Civil rights are therefore ends in themselves.

***Civil rights as means***

Civil rights can, of course, also be means to an end, the end being the ultimate goal of government, namely the attainment of a good quality of life for every citizen. In such a case civil rights become prescriptive and a moral obligation upon government. In this case the maintaining of civil rights has a normative approach; that is how people and government should behave and not merely descriptive of how people and government do behave.

Many people once believed that God and the law of nature command the protection of human rights and they fought and died to secure these rights. But most modern people no longer believe that God or nature tells them clearly whether or not they should value human rights or anything else. Because of this belief they are not prepared to defend human rights. Unless free people revive their belief in God and nature as a source of human rights, the institutions and freedoms originally stemming from that belief may well follow it onto the ash heaps of history.

Some modern writers, however, claim that the declining belief in a moral natural law has not stripped modern people of reasons and motives to protect those rights. Instead they believe the doctrine can rest upon a new philosophical foundation at least as satisfactory as the old one. It is based on mainly three principles, namely the human source of human values, the primacy of the individual, and the best test of truth.

***The human source of values***

Many ordinary citizens believe that nature does not tell us how we should behave and that we ourselves must therefore generate our own values and moral beliefs. A great

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31 Ebenstein, William, *Great Political Thinkers: Plato to the Present*, 1966, Holt, Rinehart and Winston, New York, p. 409.

many modern citizens all over the world have believed in, fought and died for the preservation of civil rights. They did this because they are human beings. Also because their personalities, life experience, and instincts make unbearable the thought of living in a world or society in which human beings are considered no more precious than animals or any thing of a lower-order value. They believe in the supreme value of the individual.

### ***The primacy of the individual***

Many modern defenders of civil rights rest their defence upon the belief of the supreme value of the individual. This belief has its origin in the Jewish, Christian and Islamic religions. This doctrine holds that all human beings, whatever their individual differences, are precious in the eyes of God, and each has immense potential for good. A prime goal for all human societies should therefore be to permit and encourage the development of each person and the realisation of his or her potential to the fullest possible extent. All social institutions, including government, should be judged by the degree to which they help or hinder the achievement of these individual goals. The main purpose of government is to provide every individual with the most favourable circumstances for his or her spiritual development – that is to create a good quality of life according to their own mental and physical abilities.

### ***The best test of truth***

The best-test-of-truth principle is its ability to defeat falsehood in the competitive market place of ideas. Modern defenders of civil rights maintain that every nation seeks to pursue policies calculated to achieve whatever values the nation may hold. Discovering which of the many policy proposals put forward are the best ones is one of the greatest problems facing any government. Experience has shown that the most effective way of solving this problem is to permit advocates and critics of each proposal to argue their ideas freely, for in the long run good ideas and proposals will win public acceptance over bad ones.

### ***Individual human rights***

What are the rights of the individual? What specific areas of individual freedom are defined and guaranteed by the constitutions of modern nations? Almost every modern constitution contains at least some formal guarantees of individual human rights. However, not every formal guarantee in each nation's constitution represents a genuinely protected right of the individuals living under a particular government. But the mere presence of formally guaranteed individual rights in any nation's constitution means that at least the framers of the constitution, for whatever reason, deemed it desirable to at least pay lip service to the idea of the rights of individuals.

### ***Civil liberties***

The doctrine of civil liberty is based on the assumption that every individual is born free and has the imprescriptible right to live life as he or she wishes. Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can

save it. While it lies there, it needs no constitution, no law, and no court to save it. The propositions on basic civil or human rights are supposed to guarantee political, economic and social liberty.

Political liberty guarantees every individual free and full participation in the political process of the country. It guarantees the right to form political parties or other interest groups to enhance the political beliefs of the individuals forming such parties or groups. It also guarantees the individual the right to vote and to stand for any political office.

*Man is born free and everywhere he is in chains. Free people remember this maxim. We may acquire liberty, but it is never recovered if it is once lost.*

**Jean-Jacques Rousseau**

Economic liberty guarantees every individual free and full participation in economic activities anywhere in the country. It guarantees every individual the freedom to work, manufacture, trade, contract and pursue his profession or career without any unnecessary control by and restriction from government. Economic freedom is the corollary of political freedom. They are like the two sides of the same coin, inseparably connected to each other. There can be no political freedom without economic freedom and vice versa. True democracy means both economic and political freedom for the individual. It is sometimes said that a liberal is someone too poor to be a capitalist and too rich to be a communist.

Social liberty guarantees every individual the liberty to associate freely with other individuals of his choice. It also includes the freedom of the individual not to associate with any other person or group. It also allows the individual even to discriminate socially against other individuals or groups with whom he wishes not to associate. This, however, does not mean that political and other formal public institutions have the right to discriminate against specific individuals or groups in favour of other individuals or groups. Social liberty also includes the liberty of individuals to educate themselves in whatever manner, in whatever language, in whatever culture and for whatever work, trade or profession they wish to. It may even include the liberty not to be educated at all. It also means the freedom to foster one's own language and culture within specific groups. It includes the forming of private clubs for any social purpose. Social activities form the private domain of the individual that any government dare not intrude upon; if the government does, then it cannot claim to be a democratic government believing in the freedom of the individual.

### **Civil obligations and civil obedience**

Civil rights and liberties represent only one side of the coin; the other side is civil obligations and civil obedience. Nowhere on earth can people demand civil rights and liberties without also being bound to certain obligations. Basic human rights and the obligation of government to maintain and respect them and to help every individual does not mean that individual citizens have no obligations towards fellow citizens, government and society as a whole. Remember that one person's rights end where

another person's rights begin; one person's liberty ends where another person's liberty begins. One cannot be free at the expense of another person's freedom. No individual has the right to intrude upon the rights of any other individual. "Do not do to others as you do not want them to do to you." This is the rule of doing to all others as we desire them to do to us, or as Justinian expressed it: "... to live honestly, to harm nobody, to render every man his due."

The above principle also means that every person must maintain civil obedience towards government and society. This means that every one must obey all laws and regulations of government, also the simplest unwritten social rules of society – the rules of just being decent. It also means that every one must pay their dues to government for services rendered. It also means that one must pay what is due to other people for things bought from them. One cannot take things from other people without paying for them. God ordained that: "Thou shall not steal." Civil obedience means respecting another person's privacy, life, rights, liberties and private property. Freedom does not mean the freedom to steal, to murder, to assault, to rape, to threaten the livelihood of your fellow countrymen, to disobey the social rules of society, to strike and to hold your employer to ransom with impossible demands, or not to work for a living and expect the government to feed you.

### **Equity**

Another basic principle a constitution should provide for is the principle of equity. The equity problem is a moral one and part of an ethical concept. In its broadest sense equity can be defined as follows: 'Equity denotes the spirit and habit of fairness and justice and right dealing which would regulate the intercourse of men with men – the rule of doing to all others, as we desire them to do to us; or, as it is expressed by Justinian, "to live honestly, to harm nobody, to render every man his due" ... It is therefore the synonym of natural right or justice. However, in this sense, its obligation is ethical rather than jural, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law.'<sup>32</sup> Equity is characterised by the maintenance of high ethical and moral standards.

It is, however, not only an ethical and moral issue but also a judicial matter. Each person by nature has inviolability based on justice that should not be violated under any circumstances, not even for the sake of the so-called general interest or welfare of the community. Therefore, the equity principle denies the argument that one person's loss can be justified by the benefit, which is created by such individual loss, shared and enjoyed by others. The equity principle does not allow sacrifices, forced upon an individual or group, to be justified by their inherent benefits for the majority. Therefore, equity is accepted as a given fact within a just society, and the natural rights of the individual, secured by the equity principle, should never be subjected to political expediency or to the so-called community or general interest of the state.

In a free and just society people share each other's fate, precisely because people agree in all reasonableness and fairness to do so. In the creation of government institutions, the goal of the community is co-operative action for the benefit and the

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32 *Black's Law Dictionary*, Fifth Edition, 1979, West Publishing Co.

interest of every individual, and not the interest of the state or the so-called community. The rationale behind the creation of government institutions is the collective pursuit of the greatest benefit for all without harming the individual. It must, however, be borne in mind that individuals are not genetically the same. Great intellectual and physical differences are likely; therefore the talented have the moral duty to support the less talented in their needs, not because of unselfishness, but for the sake of loving your neighbour and because of the resultant positive externalities for the talented.

The structural ways in which equity can be secured are abundant. There may also be a multiplicity of views on how reasonableness and fairness can be secured. On the left of the political spectrum one finds the Marxist or socialist view on the redistribution of wealth, namely the imposition of a heavy progressive tax system where everyone is taxed according to his ability to pay and where everyone receives public goods and services according to his needs. The provision of public services based on needs only means that the poor receive public goods and services at the expense of the rich. This is robbing Peter to pay Paul. According to this criterion, governments will be inclined to prefer need as a measure for distributing public goods and services.

On the right of the political spectrum, one finds the classical capitalist approach that implies that any individual is entitled only to what he can afford. This means that any individual can enjoy public goods and services only to the extent of his cash contribution towards their costs. According to this approach, more public goods and services will be rendered to the wealthier part of a community and less to the poorer part. This approach is based on absolutely free and equal access of everybody to all public goods and services. According to this doctrine, each individual can enjoy particular public services according to his ability to pay for them, or according to his tax contribution in the case of collective public services.

### **Equality**

Equality is an ideal or principle, something people aim at or guide their conduct with reference to. The concept of equality is relevant for the study of societies in which people aspire to greater equality. It is also relevant in societies in which the idea plays an important normative role in their institutions and practices, as when there is an endeavour to reduce inequalities of wealth and to secure equality of opportunity, equality of voting power, and equality of treatment before the courts.

*Democracy does not guarantee equality of condition – it only guarantees equality of opportunity.*

**Irving Kristol**

The United Nations' Universal Declaration of Human Rights (1948) proclaims: 'All human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of goodwill. Everyone is



entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...' No rational person can argue with this statement of human equality in dignity and rights; but are people really born equal in physical and mental abilities? Do all people command the same mental faculties? The obvious answer is that they do not! There is no such thing as natural equality.

*Equality may be a right, but no power on earth can ever turn it into a fact.*  
**Honoré de Balzac**

### ***Inequality***

Yes, there is such a thing as inequality in human life. In any society of whatever race, one finds natural inequality, moral or political inequality (which is not natural) and inequality of wealth caused by natural and moral inequality.

### ***Natural inequality***

Although all people are born equal in the eyes of God, people are not born similar. There is an obvious difference between being born equal and being similar. Only the most identical twins can claim to be born both equal in dignity and right and also similar. Because of the fact of non-similarity, individuals differ in many respects. For example, some people have more brawn power than others do and some have more brainpower than others do. Some have both brain and brawn power. In these two respects people are born unequal and therefore not similar. One is inclined to believe that God deliberately creates people with a difference in physical (physiological) and mental (psychological) abilities to form a natural hierarchical structure to manage the earth. Those with higher intelligence form the top of the structure; those with average intelligence form the middle of the structure; and those with lower than average intelligence form the base of the structure. This natural inequality is the basis of class differences.

*Men are born equal but they are also born different.*  
**Erich Fromm**

The intelligent and the ingenious with their innovative and creative abilities apply their ingenuity to become the upper class in society. They have the ingenuity to exploit the natural resources of the earth for their personal benefit. They become the business leaders and the professionals of society, forming the top echelons of the hierarchical human structure. The average intelligent and ingenious people, forming the middle class of society, are average achievers. They become the small business people, the artisans and the clerks. They manage to become self-sufficient and are not so much dependent upon the good graces of the upper class. Those of below average intelligence form the working class of society – the unskilled labourers employed by the upper and middle classes. They are completely dependent upon the middle and

upper classes for a living. Some may see this as a very simplistic model, but in a sense it remains an indisputable fact of life.

*If you want people to be equal you must behead them all.*

**Unknown**

The principle of natural inequality does not mean that everybody with an above average intelligence will become part of the top of the structure. This also applies to the middle class. The lazy and the useless are found among all levels of intelligence. Negative environmental (natural, political and social) circumstances could also prevent people from fully utilising their ingenuity.<sup>33</sup> The result is that the lower class may consist, first, of people who cannot, because of their mental inability, advance to the middle and upper classes; and second, of people who do have the ability to advance to the middle and upper classes, but who are too lazy and too useless to pull themselves up by their own bootstraps. Finally, there are those who are prevented by circumstances beyond their control to advance to the middle and upper classes. The division of society into classes or strata, which are arranged in a hierarchy of wealth, prestige and power, is a prominent and almost universal feature of social structure. This inequality among people has been generally accepted as an unalterable fact.

### ***Moral or political inequality***

Perhaps the most famous assertion about equality, which makes use of the nature/convention distinction, is the oft-quoted passage from Rousseau's Discourse on Inequality: "I conceive of two sorts of inequality in the human species. One, which I call natural or physical, because it is established by nature and consists in the difference of ages, health, bodily strengths, and qualities of mind or soul. The other, which may be called moral or political inequality, because it depends upon a sort of convention and is established, or at least authorised, by the consent of men. The latter consists in the different privileges that some men enjoy to the prejudice of others, such as to be richer, more honoured, more powerful than they, or even to make themselves obeyed by them."

The difference between the natural and the conventional consists wholly in the fact that the former does not depend on human choice, whereas the latter, being people-made, is of our choice. This could well seem to suggest that everything made by people could be altered if we so choose. Natural inequalities are therefore unalterable, while all conventional inequalities can be abolished or amended as we wish.

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33 The apartheid policies of the old National Party deprived many black people of the opportunity to utilise their intelligence and ingenuity and to become part of the upper class in South Africa. It is amazing to see that, in spite of this handicap, many black people have utilised their intelligence and ingenuity to become part of the upper class in society today. In spite of the protection they received under the apartheid policies, many whites failed to become more than unskilled labourers.

### ***Inequality of wealth***

In normal circumstances, namely where there are no social, political or physical restrictions depriving people of equality of opportunity, inequality of wealth is a result of natural inequality. Inequality of wealth may also be caused by deliberate political policies depriving people of opportunities to accumulate wealth according to their natural abilities.

Socialist governments try to correct inequality of wealth, from whatever cause, through a system of redistribution through taxation and government handouts. But redistribution of wealth through taxation could only work in affluent societies where the vast majority of the population is wealthy. And then only on condition that redistribution through taxation takes place in the form of educating and training the poor and teaching them to compete with their newly acquired skills in a free competitive market. In a country characterised by mass poverty, redistribution of wealth through taxation pulls every one down into a condition of misery and distress. Capitalism is the unequal distribution of wealth – communism/socialism is the equal distribution of poverty. Free welfare services and social security payments – government handouts – do not uplift the poor and the indigent. The downside of such a policy is the creation of dependence in cases where other solutions could and should be provided. The poor tend to become more and more dependent upon government support and sink further into a life of dependence, misery and distress.

The eradication of political inequality is the only long-term solution for the man-made situation of inequality of wealth. The eradication of inequality of wealth caused by natural inequality should never be attempted through redistribution by taxation. It is a natural phenomenon and should be accepted as such.

In conclusion, one can state that all the aforementioned principles mean that the constitution must guarantee the constitutional, political, economic and social rights of every individual citizen. Above all, a constitution must guarantee equality of opportunity. It also means that the constitution should be the ultimate authority and not government. The courts must have the right and the obligation to test all actions, all decisions, all policies and all laws, regulations, ordinances and by-laws of government at all levels for validity against the constitution.

### **POLITICAL PRINCIPLES**

*Politics: a strife of interests masquerading as a contest of principles.*  
**Ambrose Bierce, The Devil's Dictionary (1881-1911)**

Closely related to constitutional principles are political principles, because the constitution provides the framework and rules within which politics and political structures must operate. All political and government activities outside the framework set by the constitution would be illegal – that is unconstitutional and therefore null and void ab initio.

Political activities denote the interaction between government and its administration on the one hand and the public on the other hand. There is always a conflict between insatiable public needs competing for limited resources. Public needs can best be articulated in a democratic political system. This needs an open-system approach with direct and indirect representative political participation to bring government and its administration as close to the people as possible. Since there may also be conflict between the personal interest of individual public officials and the common interest of the public and that of private individuals, the system also demands direct accountability and public responsibility to the public from public officials. The following are crucial democratic values that should serve as principles of good governance:

### **Direct participation and the will of the people**

*Politics is the means by which the will of the few becomes the will of the many.*  
**Howard Koch**

Direct participation means the political empowerment of all citizens in such a manner to allow them to articulate their will and their needs directly to political representatives and public officials. This demands the delimitation of small sub-units for representation within the ultimate national, provincial and municipal boundaries – that is geographical constituencies and wards. The macro organisational system must be constructed in such a manner, along with the demarcation of boundaries, as to create community units to articulate their needs to political representatives. It also demands constant interaction with and response to such units by political representatives and the bureaucracy. It also demands direct access by communities and individuals to information concerning them. This principle means complying with the will of the majority of the people, but without jeopardising the rights and liberties of minorities!

### **Participation through representation**

Because of the process of industrialisation and the concomitant urbanisation resulting in the establishment of large urban areas and national states, the classic direct participatory democracy, as described by Aristotle many centuries ago, is not a practical proposition today. Representation through elected politicians has replaced direct participation by the public. In South Africa the system of representation on a constituency basis has been replaced with the so-called system of proportional representation. In this system voters no longer have a choice between persons to represent them in parliament, but only a choice between political parties.

*Democracy is also a form of worship. It is the worship of jackals by jackasses.*  
**H. L. Mencken**

### **Participation through proportional representation**

Many so-called political experts regard the proportional representative system as an ideal democratic system, because it offers all political parties the opportunity to be represented in parliament to state their case. This system is, however, causing apathy and defeatism among voters. The reason is that voters no longer have a choice between several (at least two) candidates, as is the case with the constituency system. The voter, indeed, has no say in which person should represent him in parliament, whom he can call to account if things go wrong. There is also no longer a place for meritorious independent candidates who cannot identify with any political party. Voters also do not know whom their local parliamentary representative is to whom they may take their personal problems. Proportional representation widens the gap between the voter and the representative. One now has to work through the hierarchy of a political party and, if you are not an active member of such a party, your case will certainly not receive any sympathy. The proportional representative system undermines the principle of direct participation. Under this system the so-called will of the people is tested only once every five years in a general election, leaving the majority party after an election to consult whoever it wishes, or even not to consult anybody at all if it so wishes. A proportional system of representation where parties are forced to form coalitions to govern has an inherent weakness of instability. On the other hand, it may lead to a de facto one-party state in the case of one overwhelmingly strong ruling party with a plethora of small and insignificant opposition parties dividing their collective power. The latter situation may lead to what is called the tyranny of the majority, who ignore the wishes of the minority.

*The great thing about democracy is that it gives every voter a chance to do something stupid.*

**Art Spander**

### **Responsibility and accountability of political representatives**

The essential principle of representative democracy is the responsibility and accountability of elected politicians to the public, rather than direct participation of all citizens in the policy-making and decision-making processes. Representative government implies a political division of labour, under which those for whom politics is an all-consuming passion – that is, politicians – carry on the process of political decision making. It is the notion of political accountability of representatives – through free and periodic elections and systems of recalls – that ensures that politicians govern in the interest of the public, rather than for other sectional interests. Thus representative government depends on a division of labour between politicians and citizens, as well as on the accessibility and accountability of the former to the latter.

*In politics people work hard to get a job and to do little after they got it.*  
**Ferdinand Lundberg (Politicians and Other Scoundrels)**

### **Government close to the people**

The former two principles presuppose the need for bringing government as close to the people as possible. This means demarcating geo-political units as small as possible, each with its own peculiar political and representative structure to bring government as close to the people as possible. A national state should, therefore, be subdivided into a hierarchy of regional (provincial), metropolitan, municipal, rural districts and local community areas. This principle also means the decentralisation of personal public services to the smallest local unit possible.

### **Open-system approach**

To comply with democratic principles one needs an open government system. This means a system that is in constant harmony and equilibrium with its environment, a system that is outwardly directed for identifying and satisfying the needs of the community. An open system strives for external efficiency and effectiveness; in other words, it strives to satisfy public needs optimally, instead of concentrating only on the internal efficiency and effectiveness of the administration. It should not be aimed at perpetuating the life of the organisation and for the personal gain of political office-bearers and public officials.

### **Global politics**

The recognition of the principles of global politics is imperative for good governance. The astonishing and rapid technological development of the past few decades has shrunk the boundaries of the world. Communication – especially in the field of information technology – and transport development have brought the people of every country of the world almost into immediate contact with each other. They have opened up the boundaries of countries, converting the whole world into an open global system. This is the era of the “citizen of the world”. Global politics are the basis of the international power play. No country in the world can isolate itself from the rest of the world and ignore this power play. This also applies to South Africa, which is part of the open world. Global politics will thus also have an impact on the South African community.

*A political machine is a united minority working against a divided majority.*  
**Ferdinand Lundberg (Politicians and Other Scoundrels)**

The leading nations of the world are committed to real democracy and will not tolerate the oppression of people by either the military or civilian elite dictatorships. South African political leaders must therefore be careful not to identify themselves with discredited economic and political systems and leaders of the world. Identifying themselves with such systems and leaders could jeopardise much-needed foreign

investment for South Africa. It is also obvious that the powerful so-called 'big eight' countries may not allow an undemocratic socialist/communistic system in South Africa. They might introduce all kinds of sanctions against South Africa, as is the case with Cuba.

## **ECONOMIC PRINCIPLES**

The economic systems of countries may differ. Socialist countries may follow a policy of what is called a mixed economy. That is where the private sector is running the economy but with government intervention and even government participation in specific sectors of the economy. The system is characterised by large nationalised industrial monopolies run by the state. Nationalised industries are sometimes run by the state parallel to the private sector industries, and sometimes in competition with the private sector.

Communist countries have no private sector. All property and production factors belong to the state. All industries are state owned and the economy is centrally managed by the state. The economic history of the world has proved that these two economic systems could not stand the test of time. They both failed. The communist system failed dismally in, for instance, the former USSR and the former German Democratic Republic. Where a socialist mixed economy is still in place, the signs of failure are evident. The so-called "African Socialism" of Julius Nyerere also failed dismally.

The only system that has proved to be successful for economic growth and the creation of wealth for all is what is called the social-market economic system. In this system government intervention is limited to the absolute minimum. The system is also marked by the absence of government industrial enterprises. The government does not compete with the private sector at all. All economic activities are controlled by the private sector and all economic decisions are left for a free market to decide upon. A social-market economy is sometimes described as a free market economy with social responsibility. There are several principles supporting a social-market economic system. Only a few basic principles will be explained here.

### **Economic freedom**

Democracy and democratic principles denote the political freedom of the individual. Economic freedom is the corollary of political freedom. No person can be politically free without also participating freely in the economic activities of a country. This also means that the individual may pursue his or her personal economic activities anywhere in the country without any unnecessary government restrictions and control. Economic freedom demands a free-market economy where free enterprise can contribute to economic development. Government and government intervention in the economy cannot create economic development. Socialist policies with limited economic freedom for the individual cannot create economic growth, because they cannot create economic development. World economic history has proved that only a free-market economy can create economic wealth through dynamic economic development. Economic development is imperative for economic growth, while economic growth

creates a broad tax base for the supply of revenue for the government to pay for social services and the upliftment of the poor and the indigent.

### **Private ownership of property**

A basic requirement for the economic freedom of the individual is private ownership of property, including the ownership of other production factors such as natural resources, capital and personal labour. There can be no economic freedom without private ownership of property. Private ownership of land and other production factors creates financial credibility and allows the individual owner of them to obtain capital for business and other personal purposes. The creation of a private particular property ownership system (free title deed) of houses, farmland, manufacturing and commercial properties for all is imperative to comply with the ultimate purpose of government.

Socially, private ownership of property creates a sense of civic pride and civic responsibility in the individual property owner. No matter what the size or value of such property, every owner of such property feels like a king of his own domain, not to be intruded by anyone else without his personal permission. Private property owners do not maliciously burn or damage their own properties and are therefore inclined to respect the private property of other citizens, also government property collectively owned by the citizenry.<sup>34</sup>

### **Free production process**

Private ownership of property without freedom in the private production processes of the economy does not constitute economic freedom. Private ownership of property and of other production factors with centralised state control of the production process was what characterised Mussolini's Fascist system. Fascism does not allow for economic freedom. It allows private ownership, but the government controls the production processes of the economy. Non-interference in the production processes is a basic principle of the free social-market economic system.

### **Privatisation and small business**

Economic freedom and private ownership of property demands privatisation of some government activities. Privatisation can be done by way of denationalisation, withdrawal from the market place, suspension of government economic activities, contracting out (outsourcing) and deregulation of private activities. The enhancement of small business is a natural corollary of privatisation and deregulation. Small business enterprises can, for instance, be created and developed by outsourcing many government activities and functions to private individuals.

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34 It is no accident that the stoning and burning down of schools and of houses often takes place in the rural traditional areas and in the townships, where private ownership of property never existed and was never experienced by the people of such areas. This is the direct result of apartheid and of communal ownership of property of the tribal system. Property in these systems, especially land, belongs to everybody but to nobody in particular. These people could never experience the value of private and particular property ownership and could never develop a sense of civic pride and civic responsibility.



## **Less licensing**

Business licensing has two functions, namely a revenue function and a regulation function. When licensing does not require the regular inspection by government of business or of goods sold, such licensing serves only the revenue function. The assumption of licensing for regulation purposes is that all rights to do business rest with government. In such a case government will decide on the granting of business rights to selected individuals. This is completely contrary to the principle of the economic freedom of the individual. In the case of economic freedom, licensing is only required when regular government inspection of business or of goods sold is necessary for protecting the health and safety of consumers. Licensing in this regard means only the registering of the activities and the addresses of businesses and not regulating economic activities. Unnecessary licensing should not be allowed and all business activities should be deregulated. Excessive licensing may lead to corruption.

## **Global economics**

The international economic system strives for a globally open and free trade economic system. Institutions like the International Monetary Fund [IMF] and the World Bank put pressure on countries to adopt free-trade policies. Through the World Trade Organisation [WTO] they pressurise member countries to move away from protection policies to advance free trade internationally. Free trade is a generator of rapid economic growth and increases the productivity of a country, which is imperative for maintaining a social-market system. This argument is not always true; it all depends on the comparative advantages and disadvantages it may create for each country. Because of the worldwide open international economic system, a country like South Africa cannot escape the impact of international economic trends. International recessions, depressions and high economic peaks have a direct effect on the domestic economic activities of South Africa. This reflects on balance of payments problems, low exchange-rate values of the Rand and domestic inflation. South Africa cannot, therefore, isolate itself from international economic trends and ignore the international world in its economic and fiscal policy decisions.

## **Moral values and economic principles**

It may be worthwhile taking notice here of the statement of “Moral Principles for Economic Reform” issued by the Religious Working Group<sup>35</sup> of the World Bank and the International Monetary Fund. The seven moral principles of the statement can be summarised as follows:

- All of life exists within the sphere of God’s care and judgement. There are no economic ‘laws’ that can place policy decisions beyond moral scrutiny. Economic actors and policy makers are morally accountable for their choices and their effects, intended or otherwise, on people and creation;

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35 The Religious Working Group is a Washington-based coalition of more than 40 Protestant denominations.

- Human beings are created in the image of God. Economic reform measures must respect and enhance human dignity and gender equity;
- Human beings are persons-in-community, intended to live in relationship of human solidarity according to the norms of love and justice. Economic reform measures must promote a more equitable distribution of power and wealth within and among nations;
- God is redeemer and liberator, calling us to a special concern for people living in poverty and oppression. Economic reform measures must make poverty eradication the priority for every phase of reform;
- Creation is an expression of the goodness of the Creator and is endowed with dignity and value. Economic reforms must promote sustainable development;
- Sin is social and institutional, as well as personal. Social sin is present where there are growing economic disparities, increasing concentrations of economic power, and accelerating environmental abuse. Only God is ultimate. It is a form of idolatry when any given model or system is viewed as complete or fully adequate. Economic reform measures must not be rigidly based on any one economic model. They should be flexibly adapted to specific social, economic and environmental contexts;
- All humanity is called to forgiveness, reconciliation and jubilee. Therefore, to be just economic reform measures must be accompanied by a definitive cancellation of the crushing international debt of poor countries.

The Working Group added that “...we recognise that some kind of economic reform is often necessary and that environmentally responsible growth is important for impoverished countries. But it is morally unacceptable that people who struggle to barely survive carry the burden of existing reform policies on the assumption that the benefits may eventually ‘trickle down’.”

Some people may regard some of these moral economic principles as controversial and debatable. Is it, for instance, equitable or morally right to expect that the hard-earned money of other countries’ taxpayers should be used to redeem the debt of African countries whose political leaders used international loans for unnecessary wars? Or to use such loan money to enrich their political leaders to live in golden luxury and to build up private bank accounts in foreign countries with such borrowed money? However, these seven moral principles can nevertheless serve as guidelines for government as a basis for fiscal and economic policies.

## **SOCIAL PRINCIPLES**

Societies represent integrated political, economic and social systems. The social fabric of society is an important part of political and socio-economic interactions. Social principles play an important part to secure good governance. Many social principles can be cited. The following are but a few very important ones.

### **Non-racialism and non-sexism**

In an ethnically diverse society, as is found in South Africa, non-racialism is imperative for creating a culture of belonging together and for the formidable challenge of nation building. The entire world has a history of discriminating against women, while

the skills of women are desperately needed. Non-racialism and non-sexism will restore individual dignity that has been devastatingly trampled upon in the past in South Africa. Non-racialism and non-sexism are needed in residential areas, the workplace, the professions, trade, industry, politics, recreation and all other social activities. Good governance demands strict adherence to this principle, because the country's economy demands the skills of all races and of women. However, this does not mean that merit should be thrown out of the door for the sake of so-called affirmative action!

### **Nationalism and patriotism**

Good governance demands a strong national ethos among the people of the country. Nationalism binds people of diverse ethnicities together with a common loyalty and a common patriotism. The state is then seen as a single institution of a single country with single social, political and economic systems. A strong national ethos is imperative for successful government and administration, because the government will then be regarded as legitimate and enjoy the support of the people. Divergent loyalties and a lack of a common national ethos can create friction and conflict among diversified ethnic groups within one state. Such a situation will create chaos and can even lead to civil war. A common nationalism and patriotism are thus prime principles for good governance.

### **Inclusiveness**

An all-inclusive political system is the corollary of non-racialism and non-sexism. In a real democratic system with people's participation and where the will of the people is paramount, there is no place for an elite system where political power is vested in a mysteriously organised exclusive elite group. Political structures and government institutions must be all-inclusive. This means that no individual or group should be excluded from participation in political structures and employment by government institutions. Can this principle apply to private social and economic structures? The answer is that it cannot! It would be in conflict with the principles of social and economic liberty.

Private social organisations should not be forced by law to open their membership to every one, even to those with whom the members of the organisation wish not to associate. This would violate the members' civil rights of liberty and freedom of association. They have the right to be exclusive.

The same applies to private business. Private business likewise should not be forced by law to be all-inclusive in their employment policies. Private business must make a profit for its owners. Private business needs the 'best' employees. They need employees who can make profit for their employers. With this principle in mind, it is obvious that every reasonable businessperson will employ the 'right' person, no matter of what race, sex or creed. Employment, therefore, must be based on merit. In a free and democratic society, it is unimaginable that private business should be forced by law to be all-inclusive in forming business partnerships. In a free and democratic society, it is nobody's business if any private enterprise wishes to discriminate against any person on whatever grounds. Private business, likewise, has the right to be exclusive.

### **Civic pride, civic responsibility and civic obedience**

A proud community is imperative for good governance. Personal civic pride is a prerequisite for a proud community. This can only be realised by sustaining individual dignity. Individual dignity demands the acknowledgement of every person as a human being, equal in status to every other person. Social, political and economic liberties form the basis of this dignity.

Education and training are imperative for creating civic pride. Ignorant people usually suffer from an inferiority complex. They suffer from a negative personal image. Well-educated and trained people are proud and dignified. They are noble in appearance and manner. People must be educated, trained and taught to support themselves. This is the starting point for the social upliftment of the disadvantaged and the poor. It enhances the dignity of individuals and creates self-respect resulting in civic pride. Remember that there is nothing more dangerous than ignorance and there is nothing more frustrating and dehumanising than living in ignorance.

The crucial point here is that, although all people are born equal in status in the eyes of God, they are not born similar in physiological and mental abilities. The physical power and brainpower of people differ. These differences eventually lead to a hierarchical structure of social and economic classes. The education and training system must make provision for these differences.

Civic pride and personal dignity are one side of the coin. The other side is civic responsibility. This refers to the responsibility of every one to acknowledge and defend the dignity of all others. The acknowledgement of personal dignity also demands civic obedience from every individual. This means obeying the legitimate laws and rules of society.

Politicians and public officials must make these secular principles part of their personal ethic and part of their personal moral codes of public conduct. They must not make it only part of their lives, but they must apply it every day of their lives! Then only will justice dawn upon the people of South Africa.

### **PUBLIC MANAGEMENT PRINCIPLES**

It is of no use identifying all the principles of good governance while the bureaucracy cannot do justice to such principles. The principles of sound public administration are almost inexhaustible. Only a few major ones will be dealt with.

#### **The basic principle**

The basic principle of business management is the profit motive. This is the ultimate goal of any business enterprise. If a business does not make a profit, it simply goes bankrupt and disappears. Profit is essential for the life of any business enterprise. The basic objective of government in a true democracy is not profiteering. Only in communist systems, where there is no private sector, would one find that profit for the omnipotent state is the only principle. This also applies, although to a lesser extent, in the case of so-called welfare states, where government owns nationalised industries run by government institutions. The basic principle of government in a true democracy, however, is optimum service delivery at optimum cost for realising its ultimate goal of

creating circumstances for a good quality of life for every individual citizen. Democratic governments do not seek profit. This basic principle of service delivery at cost, demands special skills in public administration theories and practices based on sound public administration principles and not on the principles of business management.

### **Organisation development**

Attempts should be made to improve government institutions and to minimise the negative and dysfunctional consequences of their actions for the benefit of the public. Organisational development is such an attempt. Beware! Organisational development does not mean uncontrolled organisational growth and the proliferation of government institutions. As an applied behavioural science, organisational development aims at improving the performance of the bureaucracy through planned actions to improve the structures and functioning of the public sector. Its underlying values are democratic and humanistic. It relies on a systematic process to diagnose and treat organisational problems and to maintain government organisations in a state where they function effectively and efficiently. In developing government organisations the following principles should be adhered to:

- deconcentration of administrative and services units – every activity and function should not be concentrated at the centre;
- decentralisation of decision making; and
- delegation of decision-making authority – high-, medium- and lower-order decisions should be delegated to top, middle and lower management levels respectively.

### **Open-system approach**

For developing an organisational structure in a democracy, an open-systems approach is imperative. This means that the organisation's activities should be directed outwardly for the satisfaction of the public's legitimate needs and for resolving the public's legitimate problems. It should be directed mainly at external efficiency and effectiveness and not only at internal efficiency and effectiveness. Concentrating only on internal efficiency and effectiveness means having a closed system that may be in constant conflict with its environment. A government organisation must therefore always act in harmony with the public and not in conflict with it – it must always be in equilibrium with its environment.

### **Value-oriented public administration**

The corollary of an open-systems approach is a value-oriented approach in public administration. This approach demands adhering to certain values such as:

- responsiveness to public needs and problems;
- public participation in decision making;
- free choice of public services by the individual;
- responsibility for programme effectiveness; and
- social equity.

### ***Responsiveness***

The responsiveness of public institutions to individual problems, needs and values, including those of specific groups, should be increased and secured. To increase and secure responsiveness, political and administrative decentralisation to the smallest autonomous government institution possible is necessary in order to secure effective voters' control of the public administration. The ways in which responsiveness can be enhanced include regular interaction between the public on the one hand and the public officials and political representatives on the other hand, and also the application of the tenets of true democracy as guidelines for action. This demands more from the public officials than reaction to the input from the political representatives only. It is common knowledge among public officials that they contribute substantially towards the formulation of government policy and this demands that they should always be on the alert and responsive to the needs, problems, wishes and values of the individual citizen. They must always be proactive.

### ***Public participation in decision making***

Participation in political decision-making by members of the public (individuals and groups directly, or indirectly through elected political representatives) must be secured. The largest possible participation in public decision-making can be secured by the acceptance of the moral principle that each and every individual citizen of a country has the democratic right to participate in public decision making in all those areas in which his or her life is being influenced, and this includes almost all government activities.

### ***Free choice of public services***

Members of the public must be free in their choice of public services. They should for instance not be forced to use particular public services against their wish, or be forced to pay for them by way of general taxes if they do not make use of such particular services. Freedom of choice can be secured by enlarging the number of options through the development and supply of alternative services that will satisfy the same need. The most effective way for enlarging the number of alternatives is the privatisation of particular services. The free choice principle also demands the abolishment of government and other public monopolies of public services. The private sector must be allowed to compete with government.

### ***Responsibility for programme effectiveness***

Programme effectiveness in an open-system approach means the execution of a programme in such a manner as to satisfy the legitimate values and needs of the individual and the community efficiently and effectively. Programme effectiveness demands administrative decentralisation, delegation of decision-making authority, and performance standards. It also demands the timely measurement and evaluation of results in order to determine whether they comply with the predetermined performance standards, but most of all whether the values and needs of the service target group have been successfully attained.

### ***Social equity***

The social equity problem is one of making government administration responsive to the needs of the individual. This requires government administration rising above the rules and routines of public administration, and demonstrating a concern for self-respect and respect for the dignity of the individual. What is needed for social equity is not public regulators but public servants willing to serve the people! The foregoing approach to social equity may be summarised as follows: the principle of social justice

- would provide social equity with a moral content. Acceptance of the principle of social justice would provide the equitable public official with clear, well-developed moral guidelines which would give social equity the force that it perhaps lacks;
- could provide the necessary ethical consensus that the equitable public official has both the duty and the obligation to deploy his efforts on behalf of all the citizens;
- would impose constraints upon all complex public institutions, since no organisation would be allowed to infringe upon the basic liberties of individuals;
- would provide a means to resolve ethical impasses; and
- would provide a professional ethical code of conduct for public officials that would require a commitment to social equity.

The long-range continuation of widespread and deep inequities in any country poses a threat to the continued existence of its political system. The continued and illegitimate deprivation of the civil rights of the individual or a certain group of individuals, amidst abundant recognition of the rights of other individuals and groups, generates a feeling of hopelessness, anger and militancy amongst the deprived. In such circumstances, where some individuals or groups feel that they have been deprived of their basic human rights, whether political, economic or social, and where the public administration generates only social costs for them over time, some people will be willing to engage in activities to destroy that system, or to bring about constitutional change. One should not be surprised at that; it is simply rational behaviour on the part of the deprived. If one is playing in a game where one is always the loser, one usually wants to get out of the game or change the rules, even by force, if necessary.

Where social equity is accepted as a major moral guideline for public administration, it will serve as a criterion for effectiveness in the same way that efficiency, economy and productivity are. A government that ignores social equity as a norm for effectiveness and that refuses to address the problem will probably eventually turn to oppressing the deprived in order to continue to exist.

### **Corporate management**

One chief officer can never manage the affairs of one large government department on his own. Each line-function service has its own particular functional and technological characteristics, demanding a variety of technological skill and knowledge. Good management therefore needs a team of experts forming with the chief executive officer a joint management team. Apart from their particular skills and knowledge of the specific functional activities of their departments, every member of the management team should be a well-qualified public manager as well.

### **Economy, efficiency and effectiveness**

Measuring the performance of any government institution is primarily concerned with the evaluation of the economy, efficiency and effectiveness of its activities. It aims at deciding the extent to which the public has received value for its money. It also aims at identifying ways in which greater value for money can be received. The value-for-money principle is concerned with three aspects, namely economy, efficiency and effectiveness. Economy is concerned with the conditions and circumstances under which a government finds its resources, such as personnel, stores and equipment. Efficiency deals with the relationships between goods and services rendered and the resources used to supply them. Efficiency shows the maximum resources for any given quantity and quality of services rendered. It is, therefore, concerned with the economic utilisation of resources. Effectiveness is concerned with how well a government has realised its predetermined goals and objectives within a framework of certain standards of time, cost, quality, quantity and public acceptability.

### **Flexibility and management of change**

Countries are dynamic social, political and economic systems. They are in a constant flux of change. This demands managerial flexibility. The most overpowering concern of government is survival, as nothing could be accomplished if it were not to survive. They must adapt or die. However, survival is only possible when the government can adapt to the changes in the environment. Some examples of these dynamic factors are changes in political representation, policy, new technologies, and the ever-changing demands of the public, and new or amended legislation. In this regard, one must remember that legislation is a management tool that should be constantly reviewed to adapt to changing circumstances. A rigidly legalistic approach where the law becomes an end in itself will not suffice. Obviously being able to change, innovate, create, alter, adapt or however one labels it, is vital to any form of life, and government organisations are no exception to the rule.

### **Sustainability and consistency**

The need for sustainability in government services and policies concerning government activities is imperative for good governance. Policies must be consistent, compatible and in harmony with the legitimate needs of the people. Policies must be constantly based on the same principles of thought and action. They must also apply equally and consistently to every individual or group. Inconsistency creates public confusion and disharmony between government and the people.

### **Accountability, responsibility, openness and transparency**

One of the principal cornerstones of democracy is that each political representative, also each public official, is subject to public accountability. This means that each of them should give an account in public of his activities. It is generally accepted that they should display a sense of responsibility when performing their official duties; in other words, their conduct should be above reproach so that they will be able to



account for their acts in public. The obligation to act responsibly and without ulterior motives means that they should earn the reputation of being a moral élite.

Public accountability also demands transparency of every activity of government. In a real democracy, there is no place for secrecy and confidentiality in dealing with government matters. Openness and transparency are the hallmarks of a democratic government and are fundamental to building confidence and trust between the public officials and the public they are supposed to serve. A key aspect of this is that the public should know more about the way the government is run, how well the government performs and the resources they consume. It means access to information by any member of the public. The public has the right to be informed on any matters concerning their relations with the government. Secrecy and confidentiality are a breeding ground for political and administrative corruption.<sup>36</sup>

*Secrecy is the beginning of tyranny.*

**Robert Heinlein**

### **The “batho pele” principles<sup>37</sup>**

“Batho pele” is an indigenous Sotho term meaning “people first”. It involves creating a framework for the delivery of public services that treats citizens more like customers and enables citizens to hold the responsible public officials accountable for the delivery and the quality of public services. It is a framework that frees the energy and commitment of public officials to introduce more “customer-focused” ways of executing their functions and doing their work. The approach is encapsulated in the term “people first”.

The ‘customer’ concept derives from the private sector, where business people cannot ignore the needs and wishes of their customers. If they do they will go bankrupt, because people may choose to take their purchasing power elsewhere. Business people soon discover that ‘the customers come first’ is not an empty slogan. By contrast, however, citizens as the ‘customers’ of public services cannot choose to take their business elsewhere. ‘Customer’ is a useful term in the context of delivering public services to the public. To treat citizens as ‘customers’ implies:

- listening to their views and taking account of them in making decisions about what services should be provided;
- treating them with consideration and respect;
- making sure that the promised level and quality of service is always of the highest standard; and

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36 Ample examples can be cited of political and administrative corruption during the reign of the old National Party with its policy of secrecy and confidentiality. The old National Party was of course forced to keep most of its activities secret and confidential because they were based on corrupt policies.

37 From the *White Paper on Transforming Public Service Delivery*, Department of Public Service and Administration, 18 September 1997.

- responding swiftly and sympathetically when standards of service fall below the promised standard.

The framework consists of seven service-delivery principles. Some of them have already been explained, albeit perhaps in other words. Those not discussed earlier will now be explained.

### ***Consultation***

Citizens should be consulted about the level and quality of the public services they receive and, wherever possible, should be given a choice about the services that are offered. Consultation will give citizens the opportunity to influence the decisions on public services, by providing objective evidence that will determine service delivery priorities. It may also foster a more participatory and co-operative relationship between the providers and users of public services. There are many ways to consult users of public services, such as customer surveys, interviews with individuals, consultation with all kinds of interest groups. Consultation must be conducted intelligently according to proven scientific methods.

### ***Service standards***

Citizens should be informed what level and quality of public services they may expect. Standards for the level and quality of services, including the introduction of new services, should be published. Standards for national services should be set to serve as national base-line standards for nation-wide service delivery. In addition to this intra-departmental service, standards should be set to serve as minimum norms for internal departmental supporting activities. Standards must be precise and measurable, so that users may judge whether or not they are receiving what was promised. Standards must be set at a level to meet the demand, but must be realistic in terms of available resources.

### ***Access***

All citizens should have equal access to all public services to which they are entitled. As explained earlier, citizens must also have a free choice of public service. Service delivery programmes should therefore specifically and progressively address the need to dismantle all barriers to access.

### ***Courtesy***

The concept of courtesy goes much wider than asking public officials to give a polite smile and to say ‘please’ and ‘thank you’, though these responses are certainly required. It should be made clear that courtesy and regard for individual dignity is one of the fundamental duties of public officials by demanding that public officials treat members of the public as ‘customers’ who are entitled to receive the highest standards of service. Standards must be set for the way in which the public must be treated. The standards should cover, among other things:

- greeting and addressing individual members of the public;
- the identification of staff by name when dealing with the public, whether in person, on the telephone or in writing;
- the style and tone of written communications;

- simplification and user-friendliness of forms;
- the maximum length of time within which responses must be made to enquiries;
- the way in which interviews should be conducted;
- how complaints should be dealt with;
- the way to deal with people who have special needs, such as the elderly or infirm;
- gender issues; and
- appropriate language.

### ***Information***

Information is one of the most powerful tools at the public's disposal in exercising its right to good service delivery. Government institutions must provide full, accurate and up-to-date information about their activities. The consultation process should be used to find out what the public wants to know and then to work out where and when the information can best be provided. Information should be provided in a variety of media and languages to meet the differing needs of different customers.

### ***Correcting mistakes and redressing failures***

The capacity and willingness to take action when things go wrong is the necessary counterpart of the standard setting process. It is also an important constitutional principle. There are a number of institutions, such as the Public Protector, the Human Rights Commission and the Auditor-General,<sup>38</sup> which serve to protect the public from maladministration and impropriety by government departments. However, such institutions should be seen as last resorts by citizens after exhausting other remedies; they are not substitutes for swift, effective action by government departments to correct any wrong or failure.

### **SUMMARY**

There are certain values that form the basis of ethical conduct. If these values are not known and are not adhered to, the road to corruption lies wide open. We may distinguish between constitutional values, political values, social values, economic values and religious values forming the basic principles and foundation of moral action in the public sector. The main constitutional principle to abide by is the rule of law supported by a sound and rigid constitution protecting the individual's civil rights. Civil rights and civil liberties go hand in hand with civil obligation. No one can demand rights without concomitant civil obligations to others and the community as a whole. Civil rights are ends in themselves but also means to an end, the end being the ultimate goal of government, namely the attainment of a good quality of life for each and every citizen. Humans are the source of their own values and the primacy of the individual is the supreme value on earth. Individual freedom is a basic human right and is based on the assumption that every individual is born free and has an imprescriptible right to live his life as he wishes. Political, economic and social liberties go hand in hand. One cannot be politically free without simultaneously being economically and socially free. Civil rights and civil liberties are only one side of the

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38 See Chapter Nine for more details on these institutions.

coin, the other side is civil obligations and civil obedience. One cannot be free at the expense of another person's freedom.

Another principle a constitution should provide for is equity. Equity denotes the spirit and habit of fairness, justice and right dealing to regulate social intercourse – the rule of just being decent. Equity is characterised by maintaining high ethical and moral standards.

Yet another principle to be protected by a constitution is equality. Equality is something peoples aim at or use as a point of reference to guide their conduct. The notion of equality plays an important role in institutions and practices when there is an endeavour to reduce inequalities of wealth and to secure equality of opportunity, equality of voting power and equality of treatment before the courts. One must guard against the misconception that we are naturally equal because we are all born equal in the eyes of God. God did not create us all equal in a physical and mental sense. There is such a thing as natural inequality. As Jean-Jacque Rousseau pointed out, one can distinguish between natural inequality and moral or political inequality. Natural inequality is the work of God, but moral or political inequality is the work of men. Inequality of wealth may be the result of both natural and moral inequality.

Closely related to constitutional principles are political principles, because a constitution normally provides the framework and rules within which politics must operate. The most important democratic principles are direct participation in public affairs by the public, which means the political empowerment of all citizens to participate in the political processes of the country. Representation through elected political representatives has replaced direct participation by the public and this brought the principles of public responsibility and the accountability of political representatives into play. These principles presuppose the need for bringing government as close to the people as possible. It also demands an open-systems approach in public administration and management, a system that is always in equilibrium with the social environment in which it operates.

Economic principles in a moral society includes things such as economic freedom, private ownership of property, free production processes, privatisation, deregulation and the stimulation of small business enterprises. It also requires less government licensing and control of business and adherence to the demands of global economics. Economic activities are also subjected to certain moral values.

It is of no use identifying all the values and principles of good governance while the bureaucracy cannot do justice to such principles. The bureaucracy must maintain the basic principles of good public administration, which are almost inexhaustible. The basic principle is that government and its bureaucracy are there to deliver services as efficiently and effectively as possible to the people. It must always be remembered that government is not a job provider, but a public service provider.

Societies represent integrated political, economic and social systems. The social fabric of society is an important part of political and economic interactions. Social principles therefore play an important part in securing good governance. Non-racialism is a paramount social principle in an ethnically diverse society and is supplemented with principles such as nationalism, patriotism, inclusiveness, civic pride, civic responsibility and civic obedience.

**Possible examination questions:**

1. Define good governance. (15 minutes)
2. Explain the rule of law, its origin; its meaning and its importance for ethical conduct. (30 minutes)
3. Explain civil rights and civil liberties and the need for concomitant civil obligations and civil obedience. (45 minutes)
4. Explain the constitutional principle of equity. (15 minutes)
5. Explain the natural principle of equality. (15 minutes)
6. Explain the phenomenon of inequality as manifested in natural inequality, moral or political inequality and inequality of wealth. (30 minutes)
7. Explain the political principles securing ethical conduct. (45 minutes)
8. Explain the economic principles securing ethical conduct. (45 minutes)
9. Describe the public administration principles that should serve as your guidelines for ethical conduct. (60 minutes)
10. Explain social principles and their importance for securing ethical conduct. (45 minutes)

## CHAPTER THREE

# RELIGIOUS VALUES FORMING THE BASIS OF ETHICAL CONDUCT

### **Study goal**

The purpose of studying this chapter is to understand that spirituality is properly political and that politics is properly spiritual and that the secular values (discussed in the previous chapter) can all be traced back to original religious thought. It must also be understood that Judaism, Christianity and Islam have a common tradition founded in monotheism. Students must also understand the Golden Rule as a common moral tradition among the world's major religions, including Hinduism and Buddhism. They must understand that God's greatest commandment forms the basis of human morality, which in turn is a prerequisite for ethical conduct.

### **Learning objectives**

After studying this chapter the student must be able to explain in his/her own words the following:

- The common tradition of Judaism, Christianity and Islam;
- The Divine Command Theory;
- Judaic, Christian, Islamic ethics;
- The Islamic concept of justice;
- The Hindu way of life and ethic of non-violence;
- Buddhism's noble truths and ethics;
- The idea of a common religious ethic and the four key principles that should form the basis of any human interaction.

## **INTRODUCTION**

We are so used to think of spirituality as withdrawal from the world and human affairs that it is hard to think of it as also being applicable to politics. Spirituality is personal and private, while politics is public. But such a dichotomy drastically diminishes spirituality construing it as a relationship to God without implications for one's relationship to the surrounding world. God created the world and is deeply involved in the affairs of the world. The notion that we can be related to God and not to the world – that we can practice spirituality that is non-political – is in conflict with the Judaic, Christian and Islamic understanding of God.<sup>39</sup>

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39 Glenn Tinder, 1989, "Can We be Good Without God?" in *The Atlantic Monthly*, December 1989.

And if spirituality is properly political, the converse also is true, however distant it may be from prevailing assumptions: politics is properly spiritual. The spirituality of politics was affirmed by Plato at the very beginnings of Western political philosophy and the notion was a commonplace of medieval political thought. Only in modern times has it come to be taken for granted that politics is entirely secular. The inevitable result is the de-moralisation of politics. Politics loses its moral structure and purpose, and turns into an affair of group interest and personal ambition. Political action thus comes to be carried out purely for the sake of power and privilege.<sup>40</sup>

*Strange is our situation here upon earth. Each of us comes for a short visit, not knowing why, yet sometimes seeming to divine a purpose.*

**Albert Einstein**

Whatever the humanists and other non-theist groups argue, the secular principles discussed in the previous chapter can all be traced back to original religious thought. They are actually all derived from religious morals.

Morals are a set of noble principles governing human conduct and originate in high spirituality. For this reason people who neglect spirituality and are therefore lacking in spiritual values cannot sustain conduct in accordance with these principles. Many people found their moral values on religious beliefs. For to be religious is to be moral.

*Yes, grass withers and flowers fade, but the word of our God endures forever.*

**Isaiah 40:8**

All of us frequently face the temptation to be dishonest. However, all of us could improve our moral behaviour in some way. Avoiding being immoral is a very worthy endeavour. We cannot all be super moral beings, but we can recognise the highest levels of ethics that humans are capable of achieving. There is something good in every one of us. However, it takes great self-control to transform yourself from the lowest level of just barely acceptable morality to the highest level of moral conduct. Being a good person is important for our own well being as well as for the good of others.

Just in case you believe that great social problems are beyond your scope, consider this story: God said to me ‘Your task is to build a better world’. I answered ‘How can I do that? The world is such a large, vast place, so complicated now, and I am so small and useless. There’s nothing I can do.’ But God in his great wisdom said: ‘Just build a better you’.

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40 Ibid.

*Make yourself an honest man, and then you may be sure there is one less rascal in the world.*

**Thomas Carlyle**

### **THE DIVINE COMMAND THEORY OF ETHICS**

There are many contemporary philosophers who do not believe in God, or who do not believe that God is the only source of morality. Their argument maintains that it is obvious that a person can have very high moral values such as honesty, loving, giving, without having any religious beliefs in God or salvation at all. All accept the so-called Golden Rule: “Do unto others as you would have them do unto you!” Another way of expressing the Golden Rule is “Treat others as you would want them to treat you”.

Religions claim to be the source of our values and morals. Some philosophers claim that these may often be false claims, because the values are older than the religions, because many religions claim the same ideas, and because several empirical studies provide no evidence that religious people are more caring, loving, generous, or helpful than non-religious people.

What those philosophers who believe that the religious claims of the Golden Rule are false claims forget is that theists believe that God was there from the beginning, long before Jesus Christ and Muhammad came to the earth. God was there when he created Adam and Eve (that is when he created human beings) and communicated directly with them. Whatever the humanists, communists and other atheists say, for the believer in God goodness has its origin in Him, the Almighty Creator of the Universe and Ruler of the earth and of all human beings and that His Holy Spirit was working in man from the beginning. God was there long before Zoroaster, Confucius, Buddha, and the unknown founder(s) of Hinduism, or Karl Marx. God created all of them. What is more is that history has it that God made His covenant with the patriarchal prophet Abraham about 2000 years before Christ, when Abraham emigrated from Mesopotamia to Palestine.

It is also no reason not to believe in the religious origin of the Golden Rule, simply because religious persons fail to abide by it, or because there are no empirical studies providing evidence that religious people are more caring, loving, generous or helpful than non-religious people are. This does not prove that such a rule or the secular values in the former chapter have no religious origin, or that God's Holy Spirit in ancient people did not inspire it. People not abiding by the golden rule simply sin as all of us can sin. It is quite obvious that the spirit of Satan competes with the Holy Spirit for the souls of men. How can human beings in their smallness and ignorance ever challenge the word and the will of God?

The most intelligent person's mind is simply too small to grasp the greatness of God and His creations. I therefore, because of my small mind, can never even contemplate the possibility of comprehending the ways and will of God as expressed in the greatness of the universe.



The belief that morality requires God is not limited to theists. Many atheists subscribe to it as well. The existentialist Jean-Paul Sartre, for example, said, "If God is dead, everything is permitted."<sup>41</sup> In other words, if there is no Supreme Being to lay down the moral law, each individual is free to do as he pleases. This is tantamount to admitting that without a divine lawgiver, there can be no universal moral law, the divine lawgiver being God. The view that God creates the moral law is often called the "Divine Command Theory of Ethics". According to the Divine Command Theory, whatever God says is right is right. If God says, "Thou shalt not steal", then you shall not steal because to steal is wrong.

Theodore Schick Jr challenges the Divine Command Theory that God is the only commander of moral law. He writes, "Fundamentalists correctly perceive that universal moral standards are required for the proper functioning of society. But they erroneously believe that God is the only possible source of such standards. Philosophers as diverse as Plato, Immanuel Kant, John Stuart Mill, George Edward Moore and John Rawls have demonstrated that it is possible to have a universal morality without God. Contrary to what the fundamentalists would have us to believe, then, what our society really needs is not more religion but rather a richer notion of the nature of morality."<sup>42</sup>

Yes, society indeed needs a richer notion of the nature of morality, but however much philosophers like Theodore Schick Jr may quibble, the fact remains that there are several religions laying down moral rules for their followers. These include Judaism, Christianity, Islam, Hinduism and Buddhism. Whether they are all true or false religions depends on what standards one uses to identify them as true or false. The standards would in any way be subjective and for our purpose it really does not matter whether they are in any terms true or false, or whether or not they are based on the belief in the same God. We are concerned here about the moral values laid down by such religions. What we are striving for is to find the common core of all morals that can serve mankind well. People of very different cultures or beliefs often have more in common than is sometimes apparent.

### **JUDAISM, CHRISTIANITY AND ISLAM: A COMMON TRADITION<sup>43</sup>**

The three great religions of the world, Judaism, Christianity and Islam, can all be linked to one common religious tradition that goes as far back as the time of the patriarchal prophet Abraham. The one fundamental unifying fact of these three religions was monotheism: faith in a single, all-powerful God who is the sole Creator, Sustainer and Ruler of the universe. Monotheistic belief emphasises the moral demands and responsibilities of the individual and the community towards the worship of one God, who is the Ruler over all. At the apex of this tradition sits Abraham, who is recognised as the founder of their faith by all three religions: Islam, Judaism and Christianity. It was during the time of Moses that the concept of God's covenant was

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41 Quoted in Theodore Schick, Jr., "Morality Requires God ... or Does It?", in *Free Inquiry Magazine*, Volume 17, Number 3.

42 Ibid.

43 Based on an article by Arshad Khan, in *The Review of Religions*, October 1992.

reiterated and reinstated among the descendants of Abraham – which was in the 13<sup>th</sup> century before Christ. This concept is illustrated in God’s statement to the house of Israel mentioned in the Bible: “I will put my law within them, and I will write it upon their hearts; and I will be their God, and they shall be my people” (Jeremiah 31:33).

Common to all three religions is the belief and ideal that through prayer and supplications, and establishing a relationship with God, one can achieve goodness in life and be in a constant state of peace and tranquillity with oneself and with one’s fellow human beings. God’s purpose, according to monotheistic beliefs, was to raise man in rank and to elevate him in terms of spiritual conduct and moral excellence. All three religions share a common belief in a living, self-sufficient and ever-present God that maintains and regulates each and every individual’s lifestyle and conduct.

Islam and Christianity hold the person of Christ to be the extension of this tradition. While both Islam and Christianity believe in Christ, the Jewish faith does not. Christianity broke away from Judaism when its adherents acknowledged the holiness and righteousness of Christ. Almost 600 years after Christ Islam broke away from the parallelisms and acknowledged the Holy Prophet of Islam, Muhammad, as a true prophet of God who came after Christ to bring God’s final law for the guidance of mankind. Islam believes that Jesus survived the crucifixion and never ascended to Heaven, but fled to India to teach his gospel to the ten lost tribes of Israel, and regarded him as Israel’s last great prophet and the precursor of Mohammed.<sup>44</sup> Both Judaism and Christianity reject this claim of God’s ‘final law’ by Islam. However, the covenant established by the patriarch Abraham, reinstated by Moses, serves as the common link between these three world religions.

When one ponders over the rift, strife and animosity among the people of the world, one can not help but ask Jews, Christians, Muslims, are we really worshipping the same God – the God of our father Abraham – or do we worship the little gods of our own making?

### **Principles of Judaism**

Judaism was the first religion to teach monotheism, or to believe in one God. This belief is the basis of Judaism and is summed up in the opening words of the Shema, recited daily: “Hear O Israel, the Lord our God, the Lord is One” (Deuteronomy 6:4). Judaism stresses conduct rather than doctrinal correctness. Its objective is a just and peaceful world order on earth.

The basic source of Jewish belief is the Hebrew Bible (called the “Old Testament” by Christians), especially the first five books of Moses called the Torah or Pentateuch. The Torah was traditionally regarded as the primary revelation of God and his law to humanity, it is considered as valid for all time.

Judaism has a system of law, known as Halachah, regulating civil and criminal justice, family relationships, personal ethics and manners, social responsibilities, such as help to the needy, education, and community institutions, as well as worship and other religious observances.

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44 Kersten Holger, 1991, *Jesus lived in India*, Element Books, Shaftesbury, Dorset, p. 192.

The most important ‘code of conduct’ of Judaism is the Ten Commandments or Decalogue, a designation of the precepts that were given by God (Jehovah or YHWH pronounced Yahweh<sup>45</sup>) to Moses on Mount Sinai. According to Exodus 31:18, they were inscribed on two stone tablets by God himself. Two different versions of the commandments are given in Exodus 20:1-17 and Deuteronomy 5:6-21, but the substance is the same in both of them.

Traditionally, the commandments have been enumerated in three ways. In Jewish tradition, the commandments are organised as follows: (1) the prologue; (2) prohibition of the worship of any deity but God, and prohibition of idolatry; (3) prohibition of the use of the name of God for vain purposes; (4) observance of the Sabbath; (5) honouring one’s father and mother; (6) prohibition of murder; (7) prohibition of adultery; (8) prohibition of stealing; (9) prohibition of giving false testimony; and (10) prohibition of coveting the property or wife of one’s neighbour.

### **The Thirteen Principles of Faith**

In addition to the Ten Commandments, one finds The Thirteen Principles of Faith first formulated by Moses Maimonides<sup>46</sup> in his Commentary on the Mishneh Torah arranged in 14 books and written in Hebrew (1170-1180), which he continued to revise until his death<sup>47</sup> and which is worthwhile quoting here:

“I believe with perfect faith that:

1. The Creator is Author and Guide of everything that exists;
2. The Creator is one; His unity is unlike that of anything else; He is our God and exists eternally;
3. The Creator has no body or physical characteristics, and cannot be compared with anything that exists;
4. The Creator is first and last of all beings;
5. It is right to pray to the Creator, but to no other being;
6. All the words of the prophets are true;
7. The prophecy of Moses is true, and He was the father (that is the greatest) of all prophets, both before and after Him;
8. The Torah now in our possession is that given by Moses;
9. The Torah will not be changed, nor will the Creator give any other Torah;
10. The Creator knows the deeds and thoughts of people;
11. He awards those who keep His commandments, and punish those who disobey;
12. Though the Messiah delays, one must constantly expect His coming;
13. The dead will be resurrected.”<sup>48</sup>

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45 Beaver, Pearce *et al.* (ed.), 1994, *The World’s Religions: A Lion Handbook*, Lion Publishing plc, Oxford, p. 452.

46 Maimonides (1135-1204), Jewish philosopher and physician, born in Córdoba, Spain. Following the capture of Córdoba in 1148 by the Almohads, who imposed the ways of Islam on Christians and Jews alike, Maimonides’s family decided to emigrate to Egypt. Eventually he became the chief rabbi of Cairo and physician to Saladin, sultan of Egypt and Syria.

47 Microsoft Encarta, 1993-2000, “Maimonides”.

48 Solomon, Norman, 1996, *Judaism: A Very Short Introduction*, Oxford University Press, Oxford, Appendix A.

Medieval philosophers and theologians, such as Saint Thomas Aquinas and Saint Bonaventure, held that all the commandments are part of the natural law and are therefore knowable to all thinking people. They maintained that God revealed the commandments to Moses to remind humankind of its obligations, easily forgotten because of original sin. Actually, these scholars were echoing a similar idea expressed by early Fathers of the Church, such as Justinus, Tertullian and Saint Augustine that the commandments had already been engraved on the human mind before they were written on the tablets of stone.<sup>49</sup>

Parallels to the Decalogue are found in laws of ancient peoples, for instance, in Egyptian religion. For example, the observance of certain precepts such as the prohibition against theft, murder, and injustice. Biblical scholars feel, however, that the Ten Commandments differ from the moral codes of other ancient religious systems in their explicit monotheism, their doctrine of God's awesome majesty and boundless goodness, and their extension of moral obligation to the most intimate and hidden desires of the human soul.<sup>50</sup>

### **Principles of Christianity**

Christianity is a worldwide religion derived from the teachings of Jesus Christ with a present-day membership of more than one billion.<sup>51</sup> It is divided into groups of denominations that differ in some areas of belief and practice. Its main divisions are the Roman Catholic, Eastern Orthodox (Russian and Greek) and Protestant churches.

It is arguable that every major religious value affirmed in Christianity originated with the ancient Hebrews. Christians sometimes speak as though unaware of the elemental facts that Jesus Christ was a Jew, that he died before even the earliest parts of the New Testament were written, and that His scriptural matrix was the Old Testament. Christianity diverged from Judaism in answering one question: Who was Jesus Christ? For Christians He was the anticipated Messiah, whereas for traditional Jews He was not. Christians believe in the trinity of God the Father, Jesus Christ His Son and the Holy Spirit. This divergence has given Christianity its own distinctive character, even though it remains in a sense a Jewish faith!

The Enlightenment has translated Christian values into secular terms and, in an age becoming increasingly secular, has given them political force. Hence if Christianity declines and dies in coming decades, our moral universe and also the relatively humane political universe that it supports will be in peril.

### ***Christian love***

For Christians, love is the highest standard of human relationships and it therefore governs those relationships that make up politics. The Christian concept of love requires attention not only because it underlies Christian political ideas, but also because it is

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49 "Ten Commandments," Microsoft Encarta ® Encyclopaedia, 1993-1996, Microsoft Corporation, USA.

50 *Ibid.* – see also Werner Keller, 1955, *Und die Bibel hat doch recht*, Econ Verlag GmbH, Düsseldorf pp. 107-109.

51 *The Hutchinson Concise Encyclopaedia*, New 1995 Edition, Helicon, Oxford, p. 201.

unique. Christian love has a distinctive name, agape,<sup>52</sup> which sets it apart from other kinds of love, such as philia, or friendship, and eros or erotic passion. When John wrote that: “God so loved the world, that he gave His only Son...” he illuminated the sacrificial character of divine love (1 John 4:9,10). This is the mark of agape. It is entirely selfless. If one could love others without judging them, without asking anything from them, or without thinking of one’s own needs, one would meet the Christian standard of love. Agape is the core of Christian morality and is a source of political standards that are widely accepted and even widely, if imperfectly, realised.<sup>53</sup>

### ***The exalted individual***

Where God’s covenant with Israel exalted the Hebrews as a nation, in Christian norms the exaltation of the individual is an imperative. It places the individual in the centre of the relationship with God and His Son Jesus Christ. According to this doctrine, through the act of creation God grants a human being glory, or participation in the goodness of all that has been created. The glory of the human being is not a mere possibility, nor does it seem quite sufficient to say it is a moral norm. It is a fundamental imperative. This means that God created human beings as individuals and not as a group, a community, or a nation, or for that matter a herd of animals. Individualism must therefore be central in Christian thinking. It is a fusion of individual freedom and divine necessity and may be characterised by saying that the glory of an individual is a destiny.

The love of God consists in the bestowal of destinies, which human beings receive and acknowledge through their faith in God. In Christian thinking a destiny is a spiritual journey. It is never completely fulfilled in time, but leads onto the plane of eternity.

The Christian concept of the exalted individual implies that government – indeed all persons who wield power – must treat individuals with care and respect. The modest standard of careful treatment of the individual implies other more demanding standards such as equality and equity. No natural, social or even moral differences justify exceptions to the rules of equality and equity. Christian universalism and egalitarianism were powerfully expressed by Paul when he wrote that “there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus.”

### ***The fallen individual***

Christians believe that all human beings are born in sin and are therefore fallible. The fallen individual is, therefore, not someone other than the same exalted individual. Every human being is both fallible and exalted. This paradox, the simultaneous fallibility and exaltation of human beings, is familiar to all informed Christians. The individual is therefore simultaneously sacred (exalted) and sinful (fallible). This principle that a human being is sacred yet morally degraded is hard for common sense to grasp.

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52 Originally a Christian feast in token of fellowship, especially one held by early Christians in commemoration of the Last Supper. Christian fellowship as distinct from erotic love. Brotherly love.

53 Glenn Tinder, *op cit*.

*The fact that man knows right from wrong proves his intellectual superiority to other creatures, but the fact that he can do wrong proves his moral inferiority to any creature that cannot.*

**Mark Twain**

It appears to us, as ordinary human beings, that some people are morally degraded (bad) and that some are morally upright (good). Only the morally upright possess dignity. The human race is divided roughly into good people, who possess the infinite worth we attribute to individuals, and bad people, who do not. The basic problem of life is for the good people to gain supremacy over, and perhaps eradicate, the bad people. In Leninist terms the 'good' proletariat must gain control over the 'bad' capitalist exploiters (bourgeoisie) and eradicate them from the earth. In apartheid South Africa the 'good' Whites were supreme and oppressed the human rights of the 'bad' Blacks. In post-apartheid South Africa the 'good' Black people must gain control over the 'bad' White people and 'eradicate them from the earth' through the processes of 'transformation' and 'affirmative action'. Or as one Member of Parliament said: "We must put them all on a ship and export them to Europe where they come from".

This common model of life's meaning is drastically irreligious, because it places reliance on so-called 'good human beings' and not on God. This is antithetical and immoral to Christianity, which maintains that God alone justifies human beings, and that all are sacred, and none are inherently good, because all are persistently and deeply inclined toward evil.

In the New Testament all God's commandments are mentioned, but never again together as a list of ten in one place. They are all spread through the ethical messages of Christ. In the Sermon on the Mount Jesus said: "Do not think that I have come to do away with the Law of Moses and the teachings of the prophets. I have not come to do away with them but to make their teachings come true" (Matthew 5:17). The Great Commandment in the ethical message of Jesus Christ is contained in Matthew 22:37-40: 'Love the Lord your God with all your heart, with all your soul, and with all your mind.' This is the greatest and the most important commandment. The second most important commandment is like it: 'Love your neighbour as you love yourself.' The whole Law of Moses and the teachings of the prophets depend on these two commandments." The instruction and exhortation of Christian teaching and preaching, concerning all the themes of doctrine and morals, are based on the love of God and the love of your neighbour. You cannot love God without loving your neighbour and you cannot love your neighbour without loving God.

The application of these commandments to the concrete situations of human life, both personal and social, does not produce a uniformity of moral social or political behaviour. Christians can be found on both the far left and the far right, as well as in the middle, of many contemporary political issues. It is, however, still possible to speak of a Christian way of doing things. The inherent worth of every person, as one that has been created in the image of God, and the striving for justice even in a fallen

world, are all dynamic moral commitments that Christians accept, in spite of the fact that their own conduct may fall short of these norms.

### **Principles of Islam**

The Arabic word al-Islam means the act of committing oneself unreservedly to God. A Muslim is a person who makes this commitment. Widely used translations such as 'resignation', 'surrender' and 'submission' fail to do justice to the positive aspects of the total commitment for which Islam stands, that is a commitment in faith, obedience, and trust to the one and only God (Allah). Muslims do not regard Islam as a seventh-century innovation, but as the restoration of the original religion of Abraham. They would also stress that Islam is a timeless religion, not just because of the 'eternal truth' that it proclaims, but also because it is 'every person's religion', the natural religion into which every person is born.<sup>54</sup>

The Great Commandment or first principle of Islam is to declare that there is none worthy of worship but God (Allah) and that Muhammad is His Apostle.

Islam is definitely an inclusive religion in the sense that it recognises God's sending of 'messengers' to all people and His granting of 'Scriptures and Prophethood' to Abraham and his descendants. The latter results in the awareness of a very special link between Muslims, Jews and Christians as all Abraham's children. Throughout history there have been believers who discerned the truth of God and responded to Him in the right manner, committing them to Him alone. Of these 'Muslims before Muhammad', the Qu'rân mentions, among others, Abraham and his sons, Solomon and the Queen of Sheba, and Jesus and his disciples. This inclusiveness is also expressed in the Muslim recognition of earlier Scriptures, namely the Torah (first five books of Moses in the Old Testament), the Psalms of David, and the teachings of Jesus.<sup>55</sup>

### ***The Five Pillars of Islam***<sup>56</sup>

The extent to which faith and religious work go together is evident from the traditional listing of the basic duties of any Muslim, the 'five pillars' of Islam:

1. The profession of faith in God and the apostleship of Muhammad – Shahada;
2. The natural prayer, performed five times a day facing Mecca – Salat;
3. Almsgiving – zakat;
4. Fasting – abstaining from food and drink during the daylight hours of the month of Ramadan – sawm; and
5. The pilgrimage to Mecca, incumbent upon every believer who is financially and physically able to undertake it – hajj.<sup>57</sup>

The witness to God stands here side by side with the concern for the poor, reflected in almsgiving. The personal involvement of the individual believer, expressed most

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54 "Islam", Grolier Encyclopaedia, Grolier Electronic Publishing, Inc.

55 Ibid.

56 Martin Forward, 1997, *Muhammad a Short Biography*, Oneworld, Oxford, p. 59.

57 Ruthven Malise, 1997, *Islam: A Very Short Introduction*, Oxford University Press, Oxford, pp. 147-151.

clearly in the formulation of the shabba (“I witness there is no God but God, and Muhammad is the messenger of God”) is combined with deep awareness of the strength that lies in the fellowship of faith and the community of all believers. These are the significant dimensions of both the ritual prayer and the pilgrims.

When applied to Islam, the word religion has a far more comprehensive meaning than it commonly has in the West. Islam encompasses personal faith and piety, the creed and worship of the community of believers, a way of life, a code of ethics, a culture, a system of laws, an understanding of the function of the state – in short, guidelines and rules for life in all its aspects and dimensions – even in politics and government administration.

### ***Islamic ethics***

The Qu’rân (Koran) is to the Muslims a complete code of conduct, as is the Torah for the Jews and the Bible (Old and New Testament) for the Christians. In the Qu’rân, God (Allah) commands the Muslims

- to be regular in their daily prayers;
- show obedience to their parents and elders;
- tell the truth;
- extend hospitality to guests;
- love their Holy Prophet Muhammad and his companions and pray for them;
- ask others to do good and to refrain from loose talk; and
- to refrain from wasting their time in useless pursuits.<sup>58</sup>

Apart from contravening the Ten Commandments, the following deeds are major sins:

- To believe in anyone as partner of God (Allah);
- to show disrespect to parents;
- to steal;
- to bear false witness;
- to backbite;
- to abuse anybody;
- to be dishonest;
- to break one’s promise;
- to commit adultery or fornication.<sup>59</sup>

### ***Islamic concept of justice***<sup>60</sup>

Equity denotes the spirit and habit of fairness and justice and right dealing which would regulate the social intercourse of human beings. It applies to the Golden Rule of doing to all others, as we desire them to do to us. Justinian expressed it as follows: “to live honestly, to harm nobody, to render every man his due”. To render everyone his due: this is a broad definition of justice.

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58 Rafiq B. A., 1992, “ISLAM my religion”, Internet, <http://www.alislam.org>

59 Ibid.

60 Based on an address titled: “*The Concept of Justice in Islam*” by Sir Muhammad Safrullah Kahn, Judge of the International Court of Justice, to a seminar on Islamic Studies at the Institute of Islamic Studies, McGill University, Montreal, Canada, 4 November 1954.



Islam, however, proceeds further in its definition of justice. It lays down that to maintain a proper standard of justice it is necessary that recompense of good should in no case be less than what a person has earned and that the penalty for a wrong should not exceed the wrong or transgression committed. The contravention of either principle would amount to injustice.

A strict concept of justice demands that reward or recompense should not be in excess of what may have been earned. Islam does not accept this limitation. It proceeds upon the principle that good multiplies itself and has the quality of prevailing against, or of driving away, evil and that therefore the beneficence put in motion by good has no limit. Consequently, there is no reason to put a limit upon the reward or recompense of good. The Qu'rân has at various places reiterated this principle: "Surely, good works drive away evil works. This is a reminder for those who would remember." (Qu'rân XI: 115) "Who so does a good deed shall have ten times as much; but he who does an evil deed, shall have only a like award..." (Qu'rân VI: 161).

"And the recompense of an injury is a penalty the like thereof; but who so forgives and his act brings about reformation, his reward is with God. Surely, He (God) loves not the wrongdoers" (Qu'rân XLII: 41). This verse lays down the principle that the penalty in respect of a wrong or injury should be in proportion thereto, but that where forgiveness would lead to reformation, the injury should be forgiven or the penalty may be reduced. This means that those who do good deeds shall be best rewarded, but for those who do evil deeds, the punishment shall be in the same ratio as the evilness of their deeds. Superficially interpreted, this means that convicted murderers should receive the death penalty, unless extenuating circumstances could be found. "Who so does evil will be requited only with the like of it..." (Qu'rân: XL: 41).

Islamic law seeks consistently for common-sense assumptions about humanity, not through the refinement of categories of its own creation. It is a system of adjudication, of ethics and of logic that finds its touchstone not in the perfecting of doctrine, but in the standards of everyday life, and measured in this way it is enormously developed, integrated, logical and successful. Man's duty is to conform to God's moral limits, not to try to invent them. But within the limits established by God one can create relationships and traffic in the knowledge of their existence, intricacies and repercussions.<sup>61</sup>

It may be explained that as the object of Islam is to bring about complete integration and planned development between all faculties and in all spheres, the sanctions in respect of all action and conduct are not only material but also moral and spiritual. Regarding the controversy of what is the province of religion and what is the province of law and politics, in other words the controversy with regard to a secular state and a religious state, Islam does not make that distinction at all. Islam is a way of life and the Qu'rân a code of laws regulating all aspects of human life – social, political and economic. From that point of view it is, if one may so express it, the most secular of all religions.

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61 Lawrence Rosen, 1989, *The Anthropology of Justice: Law as Culture in Islamic Society*, Cambridge University Press, Cambridge, p. 56.

## Principles of Hinduism

Hinduism is a major world religion, not merely by virtue of its many followers (estimated at more than 805 million in 1995), but also because of its profound influence on many other religions during its long, unbroken history, which dates from about 2000 BC<sup>62</sup>. It is the major religion of India, where nearly 85 percent of the population is classified as Hindu. Hinduism has developed over about 3500 years and has no single founder or creed; rather, it consists of a vast variety of beliefs and practices.<sup>63</sup>

In its diversity, Hinduism hardly fits most common definitions of religion. It suggests rather a commitment to or respect for an ideal way of life, known as DHARMA. The ideal way of life is only one of four aims of life distinguished within Hinduism. It is thought of as superior to two others: enjoyment of desires and material prosperity. The fourth aim is liberation, the aim of those who renounce the world, and this is classically viewed as the supreme end of human beings.<sup>64</sup>

The famous Hindu and Indian political activist, Mahatma Gandhi, listed the following seven deadly sins: wealth without work, pleasure without conscience, knowledge without character, business without morality, science without humanity, worship without sacrifice, and politics without principle.<sup>65</sup>

Hinduism religion has a concept of a supreme spirit, Brahman, above the many divine manifestations. These include the triad of chief gods (the Trimurti): Brahma (creator), Vishnu (preserver), and Siva (destroyer).<sup>66</sup> Hindus believe in the existence of God everywhere, as an all-pervasive, self-effulgent energy and consciousness. This basic belief creates the attitude of sublime tolerance and acceptance toward others. To them life is a coherent process leading all souls without exception to enlightenment and no violence could be carried to the higher reaches of that ascent.

### *Hindu ethic of non-violence*

Hindus believe that belief, attitudes and sanctions interact to produce peace or violence. Hindu scriptures say that “a person consists of desires. And as is his desire, so is his will. And as is his will, so is his deed; and whatever deed he does, that he will reap.” Two thousand years ago a Hindu saint Tiruvalluvar put it very simply: “All suffering recoils on the wrongdoer himself. Therefore, those who desire not to suffer refrain from causing others pain.”<sup>67</sup>

The basis of Hindu ethics is non-injury to others, called ahimsa, as a spiritual value and practical ethic. Ahimsa is wisdom, and wisdom is the cumulative knowledge of the existing divine laws of reincarnation, karma (the law), dharma (ideal way of life), the all-pervasiveness and sacredness of things, blended together within the psyche or soul of the Hindu.

What then is the great value called Ahimsa? Ahimsa, or noninjury is the first and foremost ethical principle of every Hindu. It is gentleness and non-violence, whether

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62 *The Hutchinson Concise Encyclopaedia*, New 1995 Edition, Helicon Publishing, Oxford, p. 441.

63 “Hinduism”, Microsoft® 97 Encarta Encyclopaedia, © 1993-1996, Microsoft Corporation.

64 “Hinduism”, Grolier Electronic Publishing, Inc.

65 *Readers Digest*, April 1999.

66 *The Hutchinson Concise Encyclopaedia*, New 1995 Edition, Helicon Publishing, Oxford, p. 441.

67 “The Hindu Ethic” in *Hinduism Today: Issue 96-02*, Himalayan Academy, 1993-1996.

physical, mental or emotional. It is abstaining from causing hurt or harm to all beings – human or animal. While non-violence speaks only to the most extreme forms of wrongdoing, ahimsa goes much deeper to prohibit the subtle abuse and the simple hurt. It excludes the killing of any living creature on earth. The Vedic<sup>68</sup> edict is: “Ahimsa is not causing pain to any living being at any time through the actions of one’s mind, speech or body.”<sup>69</sup>

### **Principles of Buddhism**

Buddhism is a major world ‘religion’, founded in north-eastern India and based on the teachings of Siddhartha Gautama, who is known as the Buddha, or Enlightened One. The number of Buddhists worldwide is estimated at 300 million. Originating as a monastic movement within the dominant Brahman tradition of the day, Buddhism quickly developed in a distinctive direction. The Buddha rejected significant aspects of Hindu philosophy, but also challenged the authority of the priesthood, denied the validity of the Vedic scriptures and rejected the sacrificial cult based on them.<sup>70</sup> Buddhism hardly complies with common Western definitions of religion. Buddhism does not stipulate. It would rather be looked upon as a moral cult. It nevertheless holds certain moral values that should be considered.

### ***The Four Noble Truths***

At the core of the Buddha’s enlightenment was the realisation of the four noble truths:

- Life is suffering. This is more than a mere recognition of the presence of suffering in existence. It is a statement that, in its very nature, human existence is essentially painful from the moment of birth to the moment of death. Even death brings no relief, for the Buddha accepted the Hindu idea of life is cyclical, with death leading to further rebirth – reincarnation;
- All suffering is caused by ignorance of the nature of reality and the craving, attachment, and grasping that result from such ignorance;
- Overcoming ignorance and attachment can end suffering;
- The path to the suppression of suffering is the Noble Eightfold Path, which consists of: right views, right intention, right speech, right action, right livelihood, right effort, right-mindedness, and right contemplation. These eight are usually divided into three categories that form the cornerstone of Buddhist faith: morality, wisdom and concentration.<sup>71</sup>

### ***The Noble Eightfold Path***

#### **Wisdom**

1. Right understanding
2. Right resolve

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68 Hindu Scriptures

69 Ibid.

70 “Buddhism“, Microsoft® Encarta 97 Encyclopaedia © 1993-1996, Microsoft Corporation.

71 “Buddhism“, Grolier Electronic Publishing, Inc. See also Damien Keown, 1996, *Buddhism: A Very Short Introduction*, Oxford University Press, Oxford, p. 93.

## **Morality**

3. Right speech
4. Right action
5. Right livelihood

## **Meditation**

6. Right effort
7. Right mindfulness
8. Right contemplation.

Right understanding means, first, the acceptance of Buddhist teachings and later their experiential confirmation. Right resolve means making a serious commitment to developing right attitudes. Right speech means telling the truth and speaking in a thoughtful and sensitive way. Right action means abstaining from wrongful behaviour such as killing, stealing, or behaving wrongful with respect to sensual pleasures. Right livelihood means not engaging in an occupation that causes harm to others. Right effort means gaining control of one's thoughts and cultivating positive states of mind. Right mindfulness means cultivating constant awareness and right contemplation means developing deep levels of mental calm through various techniques that concentrate the mind and integrate the personality.<sup>72</sup>

## ***Buddhist ethics***

The ultimate goal of the Buddhist path is release from the normal nature of existence with its inherent suffering. To achieve this goal is to attain nirvana, an enlightened state in which the fires of greed, hatred, and ignorance have been quenched. Not to be confused with total annihilation (complete destruction), nirvana is a state of consciousness beyond definition. The ultimate goal of Buddhism is to put an end to suffering and rebirth. The Buddha stated, "both in the past and now, I set forth only this: suffering and the end of suffering." Although this formulation is negative, the goal also has a positive side, because the way one puts an end to suffering is by fulfilling the human potential for goodness and happiness. Someone who achieves this complete state of self-realisation is said to have attained nirvana. Nirvana is the final and highest good; it is a fusion of virtue and wisdom. The relationship between virtue and wisdom might be expressed in philosophical language by saying that virtue and wisdom are both 'necessary' conditions for nirvana but neither is 'sufficient': only when both are present together are the necessary and sufficient conditions for nirvana found.<sup>73</sup>

The ethic that leads to nirvana is detached and inner-oriented. It involves cultivating four virtuous attitudes, known as the Palaces of Brahma: loving-kindness, compassion, sympathetic joy, and equanimity (mental composure). The ethic that leads to better rebirth (reincarnation), however, is centred on fulfilling one's duties to society. It involves charity as well as the observance of the five precepts that constitute the basic moral code of Buddhism. These precepts prohibit killing, stealing, harmful

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72 Keown, Damien, 1996, *Buddhism: A Very Short Introduction*, Oxford University Press, Oxford p. 58.

73 *Ibid.* pp. 46-47.

language, sexual misbehaviour, and the use of intoxicants. By observing these precepts, the roots of evil – greed, lust, hatred, and delusion – may be overcome.<sup>74</sup>

## TOWARDS A COMMON RELIGIOUS ETHIC

From the above analysis of the major religions of the world, it is obvious that all strive for a high level of morality among their followers. They all reject the major sins of mankind, such as murder or killing, theft, adultery, fornication and promiscuity (sexual misbehaviour), giving false testimony, coveting the property of others, showing disrespect for parents, bearing false witness, being dishonest, backbiting, abusing anybody, breaking one's promises, harmful language (defamation and hate speech), the use of intoxicants, etc.

Three of these religions believe in God as the all-powerful God who is the sole Creator, Sustainer and Ruler of the universe. The Hindus believe in the existence of God everywhere in every thing, as an all-pervasive, self-effulgent energy and consciousness. Even Buddhists, not believing in the God of the others, have a noble belief in Nirvana, an enlightened state in which the fires of greed, hatred and ignorance have been quenched. It all boils down to the Great Commandment: "Love the Lord your God with all your heart, with all your soul, and with all your mind", and "love your neighbour as you love yourself". This all refers back to the so-called "Golden Rule": "Do unto others, as you would have them do unto you"; or as Justinian puts it: "to live honestly, to harm nobody, to render every man his due."

*Preferring the interest of others to one's own is high spirituality and liberality. Those who always do good without expecting any return will one day bow before God in wonder and admiration when, unexpectedly, they meet the accumulated results of their considerateness and all the good they have done.*

### Pearls of Wisdom

## The Universal Golden Rule

According to Leonard Swidler,<sup>75</sup> these major religions cannot, however, claim the Golden Rule as emanating solely from their gospel and teachings. Many other movements and ideologies developed over many centuries of the earth's existence adopted to the idea of the so-called Golden Rule as part of their moral philosophy. The following list demonstrates just how pervasive the Golden Rule is in the world's religions and ideologies:<sup>76</sup>

**Zoroaster** (628-551 BC) Persian religious prophet and founder of Zoroastrian religion: "That which is good for all and any one, for whomsoever – that is good for me – what I hold good for self, I should for all. Only Law Universal is true Law" (Gathas 43:1).

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74 Ibid. pp. 103-115.

75 Prof. Leonard Swidler, Religion Department, Temple University, Philadelphia, PA, USA.

76 Abstract from an article by Leonard Swidler, "Toward a Universal Declaration of a Global Ethic", Internet <http://astro.temple.edu/~dialogue/Center/intro.htm>

**Confucius** (551-479 BC) Chinese philosopher and the most influential figure in Chinese history: “Do not to others that you do not want done to yourself.” (Analects 12:2 & 15:23) “What I do not wish others to do to me, that also I wish not to do to them” (Analects 5:11).

**Mahavira** (the Great Hero) the founder of Jainism (540-468 BC): “A man should wander about treating all creatures as he himself would be treated” (Sutrakri-tanga 1.11.33). “One who you think should be hit is none else but you... Therefore, neither does he cause violence to others nor does he make others do so” (Acarangasutra 5.101-2).

**Buddha** (563-483 BC) Indian philosopher and founder of Buddhism: “Comparing oneself to others in such terms as ‘Just as I am so are they, just as they are so am I’, he should neither kill nor cause others to kill” (Sutta Nipata 705). “Here am I fond of my life, not wanting to die, fond of pleasure and averse from pain. Suppose someone should rob me of my life... How could I inflict that upon another?” (Samyutta Nikaya v. 353). The Buddhist version of the Golden Rule advises: “Since all beings seek happiness and shun suffering, one should never do anything to that one would not like to be done to oneself”.

The **Hindu** epic poem, **Mahabharata** (330 BC) states: “Viyasa says: ‘Do not do to others what you do not wish done to yourself,’ this is the whole of Dharma; heed it well” (Mahabharata, Anusasana Parva 133:8).

**Moses** (500 BC) Hebrew prophet and lawgiver and founder of Israel, or the Jewish people: “You shall love your neighbour as yourself” (Leviticus 19:18).

**Judaism** (220 BC) religious culture of the Jews: “Never do to anyone else anything that you would not want someone do to you” (Tobit 4:15).

**Hillel** (70 BC – AD 10) Jewish rabbi and founder of Rabbinic Judaism, taught that the Golden Rule was the heart of the Torah: “all the rest was commentary”: “Do not to others what you would not have done to yourself” (Btalmud, Shabbath 31a) and “What is hateful to you, do not do to your neighbour”.

**Jesus Christ**: “Do for others just what you want them to do for you.” (Luke 6:31); “Do for others what you want them to do for you: this is the meaning of the Law of Moses and of the teachings of the prophets” (Matthew 7:12).

**Muhammad** (570-632 AD) Arabian prophet born in Mecca and founder of Islam: “Noblest Religion is this – that you should like for others what you like for yourself; and what you feel painful for yourself, hold that as painful for all others too. No man is a true believer unless he desires for his brother that which he desires for himself.”

**Immanuel Kant** (1724-1804 AD) German philosopher: “Law of Universal Fairness: Act on maxims which can at the same time have for their object themselves as universal laws of nature... Treat humanity in every case as an end, never as a means only” (Critique of Practical Reason, A 54)

**Baha’ullah** (1817-1892 AD) born in Persia and founder of Baha’ism: “He should not wish for others that which he doth not wish for himself, nor promise that which he doth not fulfil.”

**Sotaesan** (founder of Won Buddhism in Korea): “Be right yourself before you correct others. Instruct yourself first before you teach others. Do favours for others before you seek favours from them.”

Leonard Swidler explains that the core of the world’s major religions, the “Golden Rule“, does not attempt the futile and impossible task of abolishing and annihilating the authentic ego. On the contrary, it tends to make concern for the authentic ego the measure of altruism.<sup>77</sup> Swidler quotes from the Scripture of Won Buddhism: “Do not foster the ego more than the alter; care for the alter as much as for the ego.”<sup>78</sup> To abolish egoism is to abolish altruism also; and vice versa.” In simple language this means not to love yourself more than you love your neighbour and do not love your neighbour more than you love yourself. The reciprocal love between human beings must therefore be coterminous. Only then will they not harm each other. Human love necessarily must start with self-love, for one can love one’s “neighbour” only as much as one loves oneself; but since one becomes human only by inter-human mutuality, loving others fulfils one’s own humanity, and hence is also the greatest act of authentic self-love.

Authentic egoism and authentic altruism then are not in conflict with each other; the former necessarily moves to the latter. The foundation of human society must be first authentic self-love, which includes moving outward to loving others. Not recognising this authentic self-love is the fundamental flaw of those idealistic systems, such as communism, that try to build a society on the foundation of altruism<sup>79</sup> – that is “from each according to his ability and to each according to his needs.” This Marxist doctrine failed the world dismally and miserably because it denied individualism and authentic self-love.

Swidler cites three other truths emanating from the “Golden Rule“:

- Humans are always to be treated as ends, never as mere means, i.e., as subjects, never as mere objects;
- Those that cannot protect themselves ought to be protected by those who can;
- Non-human beings are also to be revered and treated with respect because they are also creations of God.<sup>80</sup>

*We have to build a better man before we can build a better society. Our purpose is not to make a living but a life – a worthy, well-rounded, useful life. Morality is not a subject; it is a life put to the test in dozens of moments.*

**Paul Tillich**

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77 Ibid.

78 Ibid.

79 Ibid.

80 Ibid.

## Four key principles

Emanating from what has been discussed so far are key principles forming the basis of any human interaction. The Global Dialogue Institute<sup>81</sup> recently identified four key principles; they are justice (fairness), mutual respect (love and consideration), stewardship (trusteeship) and honesty (truthfulness).

**Justice:** The first principle – justice – can be defined as just conduct, fairness, and exercise of authority in the maintenance of right. All three faiths, Judaism, Christianity and Islam, agree that God created the world and that justice must characterise the relationship between its inhabitants. Fair dealings between each other as well as between believers and others is constantly reiterated in the Scriptures as are God's justice and mercy in his dealings with mankind.

**Mutual respect:** Mutual respect or love and consideration for others are also inherent in the moral teachings of each religion. The word 'love' has many meanings in most languages. What the Scriptures express as 'love' is here rendered as mutual respect or reciprocal regard because you must "love thy neighbour as thyself". The application of this has come to mean that self-interest only has a place in the community in as much as it takes into account the interests of others.

**Stewardship:** A third principle shared by all three faiths is that of stewardship (trusteeship) of God's creation and all that is in it. Human beings are set over it all with delegated responsibility. They are stewards charged with its care and proper use for which they will have to give account. Human beings, and therefore also government, are God's trustees.

**Honesty:** The fourth principle inherent to the value system of each of the three faiths is honesty. It incorporates the concepts of truthfulness and reliability and covers all aspects of relationships in human life, thought, word and action. It is more than just accuracy or correctness. It is an attitude that is well summed up in the word 'integrity'. Speaking the truth is a requirement for everyone.

*An honest man is the noblest work of God.*

**Alexander Pope**

The ultimate truth of the "Golden Rule" is that if every politician and every public official, whatever their religious beliefs or creed, adopts the "Golden Rule" as the moral core of his conduct, then fraud, corruption and bad management may disappear from government and public administration. Then only will they stop committing the major sins of humankind. They must remember 'just to build a better you'. For being good is to abstain from being corrupt and harming someone else in any manner. Doing your best is to love God with all your heart, with all your soul, and with your entire mind, and to love your neighbour as you love yourself.

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81 Global Dialogue Institute, "An Interfaith Declaration", Internet, <http://astro.temple.edu/~dialogue>



Politicians and public officials must always remember that God created humankind as individuals (not as mobs) to be respected by government as individuals with individual human rights and that governments are the trustees of God to rule in His name.

Maybe it would not be such a bad idea for all politicians and public officials to return to the Scriptures. Let them study and apply the Law of Moses and the teachings of Christ, especially His Sermon on the Mount, and those of Muhammad, as well as those teachings of Buddha and the other ancient moral philosophers. Let them try just ‘to build a better you’.

*I believe that if we are able correctly to answer the question – what went wrong – we will be able halfway to finding the solutions which will make it possible for all of us to realise the common dream of creating a decent, humane and caring society of which all our people would be proud.*

**Thabo Mbeki**

## **SUMMARY**

We are so used to thinking of spirituality as withdrawal from the secular world of human affairs that it is hard to think of it as being also applicable to politics. However strange it may sound, politics is properly a spiritual enterprise. Whatever the humanists and other non-theist groups argue, the secular principles of politics, economics and sociality can all be traced back to original religious thought. They are actually all derived from religious morals. In spite of their separateness, all world religions have a common moral-ethical core based on the one Golden Rule – “Do unto others as you would have them do unto you”; or as Justinian puts it: “to live honestly, to harm nobody, to render every man his due.” Emanating from the religious values are five key principles, namely justice that can be defined as just conduct; fairness in the exercise of authority and the maintenance of right; mutual respect and consideration for others; stewardship or trusteeship for God’s creation; and honesty incorporating the concepts of truthfulness and reliability. The ultimate truth of the Golden Rule is that if all public officials, whatever their religious belief or creed, adopt the Golden Rule as the moral core of their conduct, then public corruption may disappear. Public officials must just remember “to build a better you”!

**Possible examination questions:**

1. Explain monotheism as the common tradition of Judaism, Christianity and Islam. (15 minutes)
2. What does the Divine Command Theory mean? (15 minutes)
3. Explain Judaic, Christian and Islamic ethics. (30 minutes)
4. Explain the Islamic concept of justice. (20 minutes)
5. Explain Hindu way of life (dharma) and its ethic of non-violence (ahimsa). (20 minutes)
6. Explain Buddhism's way of life (Nirvana) and its noble truths and ethics. (20 minutes)
7. Write an essay on the idea of a common religious ethic. (45 minutes)
8. Explain the five key principles that should form the basis of any human interaction. (30 minutes)

## CHAPTER FOUR

# CORRUPTION AND ITS MANIFESTATIONS

### Study goal

The purpose of studying this chapter is to understand the meaning of corruption, the reasons for and manifestations of corruption in the form of criminal, administrative, political and religious government actions or non-actions. Students must also understand that the main reason for public corruption is immoral politicians and public officials with corrupt minds.

### Learning objectives

After studying this chapter the student must be able to explain in his/her own words the following:

- The main factors contributing to corruption;
- The meaning of corruption;
- The nature of criminal corruption and its manifestations;
- The nature of maladministration as corruption and its manifestations;
- The nature of political corruption and its manifestations;
- The nature of religious corruption committed by governments.

### INTRODUCTION

Corruption appears in all spheres of human action, both in the private and public sectors. Public corruption is the result of immoral and unethical conduct of politicians and public officials. It is the ignorance of moral values; the ignorance of constitutional, political, economic and social principles; the ignorance of the principles of good governance and good public administration. It is the ignorance of religious morals that should serve as ethical codes of conduct for the public sector. It represents a complete lack of personal integrity. Corruption has existed ever since antiquity as one of the worst and, at the same time, most widespread forms of behaviour, which is inimical to the administration of public affairs when indulged in by public officials and elected representatives.

*What is corruption? In the eyes of the man in the street the picture is one of a bloated bureaucrat within a bloated public service with his snout in the pig-trough, improperly riding the gravy train, milking the fiscal cow or fleecing the public by demanding bribes.*

**Peter Wronsley, former Auditor-General of SA**

Corruption is usually regarded as behaviour of public officials that deviates from accepted norms in order to serve private ends. Corruption obviously exists in all societies, but it is obviously more common in some societies than in others and more common at some times in the evolution of a society than at other times. The general impression is that its extent correlates reasonably well with the rapid social, political and economic modernisation of a country and its people. Corruption may be more prevalent in some cultures than in others, but in most cultures it seems to be most prevalent during the most intense phases of political change and development. Corruption in the public sector requires some recognition of the difference between public role and private interest. If the culture of the society does not distinguish between the political representatives' roles as private persons and their roles as rulers, it is impossible to accuse them of corruption in the use of public money.

The laws relating to corruption try to enforce and enhance those rules that society at a particular point considers proper for its orderly functioning. In Europe, the French Napoleonic Code of 1810 may be regarded as the juncture at which tough penalties were introduced to combat corruption through an act that did not conflict with a public official's official duties as well as through an act that did. The first generally defined corruption in the wider sense and the latter as proper corruption. More recently, the deepening interest and concern shown in such matters everywhere have produced national and international reactions.<sup>82</sup>

From the beginning of the 1990s corruption has always been in the headlines of the press. Although it had always been present in the history of the world, it does appear to have virtually exploded across the newspaper columns and news reports of a number of countries all over the world, irrespective of their economic or political regime. South Africans, for instance, have been literally shaken by huge corruption scandals and some now consider that corruption represents the most serious threat to our newly found democracy.<sup>83</sup> This indicates that corruption needs to be taken seriously by the government and by Parliament.

## **REASONS FOR CORRUPTION**

One may well ask what the reasons are for corruption on such a huge scale. The main contributing factors of corruption are –

- the concentration of political power;
- non-democratic and autocratic regimes;
- a cumbersome bureaucracy;
- excessive administrative controls and trade restrictions (government licensing);
- government monopolies;
- government concessions for economic, industrial and infrastructure development;
- a poorly organised and underpaid civil service;
- a weak judicial set-up, and as an over-riding general ingredient;

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82 Council of Europe, 1998, Programme of Action against Corruption, Part II.

83 New National Party, 1998, *Corruption Barometer*

- a materialistic concept of success where power, money, status and ostentation play a leading, if not primary, role. Simple human greed is very often a main contributing factor to corruption.

All these situations quoted as ‘reasons’ for corruption, point to the main reason for corruption. The main reason is politicians and public officials with corrupt minds and a complete lack of personal integrity – a complete lack of character! Situations are not really ‘reasons’ for corruption, but people with corrupt minds are. People who were brought up and educated to respect high moral values are not inclined to act corruptly, whatever the situations they find themselves in.

### WHAT IS CORRUPTION?

A simplistic definition of corruption would be that it is ‘the abuse of public office for private gain’. Corruption is wrongdoing by those in a special position of trust. The term corruption is commonly applied to self-benefiting conduct by public officials and others dedicated to public service. Ever since the dawn of civilisation, it has been recognised that anyone put into a position of exercising communal or collective or public power and commands public obedience is tempted to use public office for personal gain and advantage.

*To steal public resources is merely to do the done thing by taking advantage of the position you find yourself in, of access to these resources by virtue of the fact that you happen to be employed in the public service.*

**Thabo Mbeki**

Defining corruption is, however, not so simple, because corruption can take on many forms. Corruption is a many-faceted phenomenon. It can be viewed from different angles, for example, from a social or religious angle, or from a political or economic perspective, or as an organisational issue, or from a perspective of criminal, civil or administrative law. If corruption is viewed too narrowly only one facet may be revealed, for example, corruption as criminal behaviour. Awareness of this problem sometimes also results in a broad definition of the concept. There are a number of general offences committed by public officials in the course of their employment that can be treated as corruption, for example theft, embezzlement, fraud and other criminal acts. In essence, corruption is not only about getting caught with one’s fingers in the till, but also about abuse of power or lack of moral integrity in the decision-making process.

Corruption should of necessity also be equated with corruptive criminal deeds. Corruption has always been a close companion of crime. This explains to a large extent the multiple forms it takes on and the varied terminology to describe it: bribery, graft, gift taking, and kickbacks, etc. Likewise, both non-criminal and criminal corruption, are expressions of the same attitude to morals, ethical principles and public accountability and responsibility.

Corruption may also be seen as a phenomenon of the society and in that sense one may speak of systematic corruption of legal systems, of sound public administration, of the delivery of public services and of policy-making. Such corruption can skew incentives disastrously, undermine voluntary compliance with tax payments, deter investment and render democracy ineffectual. It generates economic costs by distorting incentives, political costs by undermining institutions and social costs by redistributing wealth and power in an unfair manner. When corruption undermines property rights, the rule of law, and incentives to invest, then economic and political development are crippled. Without economic development one cannot create wealth and without wealth one cannot maintain true democracy.

In order to explain the meaning and manifestations of corruption, one should further categorise corruption as criminal corruption and non-criminal corruption. Non-criminal corruption can further be divided into political corruption and administrative corruption. The fact that some corruptive acts can be classified as non-criminal does not take away its detrimental and sometimes devastating affects on the public. Corruption in fact, hurts the poor; in addition, data and research show that the deleterious effects of corruption on growth have been mounting; corruption slows direct foreign investment; distorts public expenditures; and overall, far from being a lubricant of development, as some have suggested, it is instead a most formidable impediment.

## **CRIMINAL CORRUPTION**

Criminal corruption refers to those corruptive deeds that are criminal, i.e. committing an unlawful offence that is punishable in a court of law. In this sense corruption can legally be defined as: “an act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and rights of others”.<sup>84</sup> It may be appropriate to quote the definition of corruption as contained in the Corruption Act (Act No. 94 of 1992) of South Africa:

“(1) Any person -

- (a) who corruptly gives or offers to give any benefit of whatever nature which is not legally due, to any person upon whom -
  - (i) any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law, or to anyone else, with the intention to influence the person upon whom such power has been conferred or who has been charged with such duty to commit or omit to do any act in relation to such power or duty; or
  - (ii) any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law and who committed or omitted to do any act constituting any excess of such power or any neglect of such duty, with the intention to

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84 *Black's Law Dictionary*, Fifth Edition, 1979, West Publishing Co.

- reward the person upon whom such power has been conferred or who has been charged with such duty because he so acted; or
- (b) upon whom any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any post or any relationship of agency or any law and who corruptly receives or obtains or agrees to receive or attempts to obtain any benefit of whatever nature which is not legally due, from any person, either for himself or for anyone else, with the intention –
- (i) that he should commit or omit to do any act in relation to such power or duty, whether the giver or offeror of the benefit has the intention to influence the person upon whom such power has been conferred or who has been charged with such duty, so to act or not; or
  - (ii) to be rewarded for having committed or omitted to do any act constituting any excess of such power or any neglect of such duty, whether the giver or offer or of the benefit has the intention to reward the person upon whom such power has been conferred or who has been charged with such duty, so to act or not, shall be guilty of an offence”.

This is an exceptionally broad definition of corruption in the form of bribery. It covers almost all possibilities that may occur. What emanates from this definition is that both the briber and the bribed are guilty of a criminal offence. Furthermore, only an offer or an agreement to bribe or to be bribed without any money or some other material benefit changing hands beforehand constitutes a criminal offence. This means that even the intention to bribe or to be bribed is an offence.

Corruption of a criminal nature includes such crimes as bribery, extortion, receiving kickbacks, fraud, falsification and forgery.<sup>85</sup>

### **Bribery**

Before explaining bribery it would be useful to define a bribe. According to Black's Law Dictionary, a bribe is any money, goods, right in action, property, thing of value, or any preferment, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of a person in any public or official capacity; a gift, not necessarily of pecuniary value, bestowed to influence the conduct of the receiver.

Bribery can therefore be defined as the offering, giving, receiving, or soliciting of any thing of value to sway the judgement or action of an official in a position of trust and influence. It is the corrupt tendering or receiving of a price for official action. It is the receiving or offering of any undue reward by or to any person concerned in the administration of public justice or public officer to influence his behaviour in office.

At common law, the gist of the offence was the tendency to pervert justice; or the offering, giving, receiving or soliciting of anything of value to influence the action of a public official; or a corrupt agreement induced by offer of reward. The term now, however, extends to many classes of officers and is not confined to judicial officers only.

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85 Except where otherwise indicated, the definitions of all these terms are borrowed from *Black's Law Dictionary*, Fifth Edition, 1979, West Publishing Co.

It applies to both the actor and receiver, and extends to voters, legislatures, police officers, judges, magistrates and all other classes of public officials. All persons whose official conduct is connected with the administration of government are subjects.

It is necessary to note here that the action must be undertaken with the intent to induce or influence action. Both the briber and the bribed must have the intent to commit a corrupt deed. If there is no intent of committing a bribe, no criminal offence was committed. This brings back the case of gifts to public officials without an apparent intent to bribe at the moment of presentation.

The legal question is whether gifts like Christmas presents, invitations to free hunting trips to private game farms and free fishing expeditions are bribes or sincere tokens of friendship and thankfulness. The legal question is whether these gifts were given with the intent to induce or influence the public official to do something illegal for the benefit of the presenter. Must the intent to bribe be proved at the moment of presentation? The intent to bribe may only become explicit some considerable time after the presentation of the gift. One day the briber may come back and demand his quid pro quo from the deal. So the intent to bribe is concealed at the time of presenting the gift, but becomes apparent at a much later stage. However, it may be very difficult to prove intent after the laps of a considerable time.

It must always be born in mind that both the briber and the bribed are guilty of a criminal offence. So, the best advice to any public official is to abstain from receiving bribes and even the most innocent little gifts from members of the public.

### **Extortion**

Extortion refers to the obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear, or under colour of official right.

A public official will be guilty of theft by extortion if he purposely obtains the property of another by threatening to:

- inflict bodily injury on anyone or commit any criminal offence; or
- accuse anyone of a criminal offence; or
- expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or
- to take or withhold action as an official, or cause an official to take or withhold action; or
- bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
- testify or provide information or withhold testimony or information with respect to another's legal claim or defence; or
- inflict any other harm that would not benefit the actor.

### **Kickbacks**

A kickback is the repayment of a portion of the purchase price to a buyer or public official by a seller to induce purchase or to influence improperly future purchases, contracts or leases. Kickbacks are common corrupt actions in the public sector in cases of procuring resources by way of granting tenders to suppliers of such resources or in the case of the appointment of consultants or contractors.



*Just as it is impossible not to taste honey or poison that one may find at the tip of one's tongue, so is it impossible for one dealing with government funds not to taste, at least a little bit, of the King's wealth.*

**Kautilya (Prime Minister of a state in Northern India)**

## **Fraud**

Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon the perverted truth to part with some valuable thing belonging to him or to surrender a legal right. It is a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his injury.

It is a generic term, embracing all multifarious means that human ingenuity can devise, and which is resorted to by one individual to gain advantage over another by false suggestions or by suppression of the truth. Fraudulent actions include all surprise tricks, cunning, dissembling, and any unfair way by which another is cheated. It refers to any kind of artifice employed by one person to deceive another.

Courts have distinguished two types of fraud, actual fraud and constructive fraud. Actual fraud is intentional criminal deception for the purpose of inducing another to part with something of value, to acquire something of less than apparent value, or to surrender a legal right. Constructive frauds are words, acts, or omissions that tend to mislead or deceive someone or violate a confidence but that are not necessarily of malicious intent.

## **Falsification**

Falsification means to counterfeit or forge; to make something false; to give a false appearance to anything. It is to make anything (document or record) false by mutilation, alteration or addition. The word falsify may be used to convey two distinctive meanings – either that of being intentionally or knowingly untrue, made with intent to defraud, or mistakenly or accidentally untrue. Falsifying a public (government) document is a high offence against public justice.

## **Forgery**

Forgery is related to falsification. A person is guilty of forgery if, with the purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor

- alters any writing of another without his authority; or
- makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorise that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
- utters any writing that he knows to be forged in a manner specified above.

Simply stated, forgery is the fraudulent alteration of a written document with the intent to defraud.

Forgery as a crime includes both the act of forging the handwriting (typewriting) of another as well as the act of uttering as true and genuine any forged writing knowing to be forged with the intent to prejudice, damage or defraud any person or institution. It includes the false making of a document that purports on the face of it to be good and valid for the purpose for which it was originally created, with the purpose to defraud any person or institution.

### **Embezzlement**

Embezzlement, in criminal law, is the fraudulent and usually permanent appropriation of property, generally money, by one to whom it has been entrusted. Embezzlement is to be distinguished from common law larceny (theft), which requires that there be an initial taking of property directly from the rightful owner without the owner's consent. A public officer who diverts public funds to his own use, even temporarily, may be convicted of this crime. Public officials cannot claim that they 'borrowed' the money with the intent to pay it back.

### **Graft**

The popular meaning of graft is the unlawful and fraudulent obtaining of public money by public officials. It also means advantage or personal gain received because of the public official's peculiar position of trust and confidence, without rendering compensatory service in lieu of the advantage or personal gain received. It also refers to dishonest transactions in relation to public or official acts. It sometimes implies theft, corruption, dishonesty, fraud, or swindle, and always implies a lack of personal integrity.

In some cases public officials use advance and confidential information to produce profits for themselves. The profit measures the extent to which the public official, through the use of inside information, "steals" from the public through their excess payment for something. A good example is the buying of land at low present market values based on advance and confidential information, to be sold at a later stage to the government at exceptionally higher prices for a special government project. A second example is the establishment of a company with members of the official's family as directors to do business with the government. Tender specifications may then be written so that the company would be the only one to qualify, with prices artificially increased for the enrichment of the public official and his family at the expense of the taxpayer.<sup>86</sup>

### **Ghosting**

Theft through phantom resources, which means receiving payment for resources not actually delivered, can take several forms. One method is the ghost employee or ghost government pensioner on the payroll of the government. He receives payment but does not exist – the paymaster pockets the money. A second method is payment for supplies or services that were not actually received. A third method is double payment of accounts for stock or services delivered – a second account is sent long after the first one

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86 Gildenhuys J. S. H., *op cit.*, p. 46.

is paid for a second payment. Yet another example is forming a ghost company doing business with the government. A public official establishes a fictitious company, hires a private post box from a post office, issues official orders to this fictitious company and submits fictitious accounts for the delivery of fictitious resources. The public official must of course be in control of all these steps of the procurement process.<sup>87</sup>

### **Diversion of public resources**

Politicians and other officials may use public assets or the service of civil servants for private purposes. Public equipment, office supplies, other stock and employees may be used for the improvement and maintenance of other officials' and politicians' private property. Civil servants are sometimes used as workers in political campaigns during government office hours – a special illegal advantage of incumbency and something that can only be defined as “straightforward stealing”.<sup>88</sup>

### **ADMINISTRATIVE CORRUPTION**

Administrative corruption is sometimes referred to as “maladministration”. For the purpose of this publication, preference is given to the wider interpretation of corruption, which defines maladministration as another form of corruption. Public officials with integrity will never make themselves guilty of maladministration; it is only those with corrupt minds that will mismanage government affairs with corrupt purposes in mind.

Administrative corruption is by definition not necessarily criminal but always unethical. It could include both criminal and unethical actions. Administrative corruption cannot always be explained in simple terms. Every one thinks they know what corruption means, but their definitions may differ from those of others on a particular instance of corruption. Everything depends on how widely one perceives or construes the term administration. If the promulgation of rules and regulations and adjudication in the process of the execution of laws is included in the term administration, one widens the notion of administration and, in doing so, the area in which administrative corruption can occur.

There is little doubt that official action that transgresses the law, although not criminal, is an excellent example of administrative corruption. Transgression of the law may arise from

- a failure to carry out a duty imposed by law;
- actions which go beyond the powers conferred by law or regulations;
- the use of delegated power conferred by law for a purpose for which it was not intended; and
- actions that do not follow a procedure laid down by law, aimed at preventing arbitrary or unreasonable decisions in the application of legal powers.

Actions influenced by criminal corruption such as bribery can also be regarded as administrative corruption. The above-mentioned examples can all be regarded as

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87 Ibid.

88 Ibid., p. 47.

illegal actions. There may, however, be cases of administrative corruption where officials with discretion and delegated power may be influenced to take specific actions or not to act at all, although it cannot be proved to be illegal or criminal. In addition to the above-mentioned examples of illegal administrative action, another area of administrative corruption may exist.

A citizen not only has the right to expect that his or her affairs should be handled effectively, correctly and with speed, but also that his or her personal values and individual rights must be regarded with sympathy, reasonableness and respect. A public administration that ignores or suppresses individual human rights and personal values is guilty of gross administrative corruption. Public officials must realise that individual matters handled by them, no matter how small and unimportant they seem, are usually very important to the individual, albeit only small matters in the routine activities of the public officials.

*One of the many faces of corruption – in fact the most familiar one – is the entrenchment of incompetence. Entrenchment of incompetence is one of the most dangerous forms of corruption.*

**Willie Esterhuyse**

In their contact with public officials, individuals may occasionally experience unnecessary delays, discourtesy, unreasonableness, bias, ignorance, incompetence, high-handedness, disrespect and arrogance on the part of the public officials. This may leave the individual with a feeling of impotence and frustration against the usually anonymous, remote and impersonal public administration in attempting to find a remedy for these acts of administrative corruption.

Examples of non-criminal or “not-so-very-criminal” administrative corruption are almost inexhaustible. The following are some examples that may be cited:

- negligence in the execution of functions;
- unjustifiable delay in executing functions and taking actions;
- delay in reaching decisions;
- failing to take relevant considerations into account;
- failing to observe relevant rules and procedures;
- failing to review rules and procedures whenever it becomes necessary
- failing to answer a letter;
- losing by negligence or destroying records on purpose;
- giving misleading statements to members of the public about their legal rights;
- delay in completing tasks on their target dates;
- giving incomplete or ambiguous instructions to the official who is applying the rules;
- getting the facts of a case wrong or neglecting to collect all the data for proper decision making; or
- failing to take known facts into account that should have been taken into account when taking decisions;

- loafing on the job (reading newspapers and playing games on personal computers, or watching cricket on portable television sets for hours) – loafing on the job is tantamount to stealing part of one's salary;
- making private telephone calls from official telephones without paying for them;
- using stationery and other office equipment for private purposes;
- using government vehicles and other equipment for private purposes;
- using junior personnel for private errands, and many others.

Anyone not delivering a full day's work is stealing part of his wages – loafing on the job is a form of corruption. Anyone not being paid his worth for delivering a full day's work is being robbed by his employer – another form of corruption.

These examples are serious, but the more serious examples of administrative corruption are those ignoring the principles of good public administration, for instance, failing to

- deliver public services at optimum cost, that is as effectively and efficiently as possible;
- abide by budgetary discipline and exceed budget votes without prior approval;
- organise the department for effective and efficient management;
- concentrate on external efficiency and effectiveness;
- be responsive to public needs and problems;
- allow public participation, where necessary, in decision making;
- allow a free choice of public services;
- apply social equity;
- apply effective corporate management;
- apply the principles of economy, efficiency and effectiveness in the management process;
- allow flexibility and management of change under changing circumstances;
- be consistent;
- accept accountability and acknowledge responsibility;
- and failing to allow for complete transparency – that is maintaining so-called confidentiality and secrecy where it should not be allowed, i.e. for covering-up purposes.

All these non-actions point to administrative incompetence. Incompetence is one of the general manifestations of corruption and, as Esterhuyse puts it, it is one of the most dangerous forms of corruption.<sup>89</sup> Corruption can only be effectively combated if competent and devoted people of integrity do it. When incompetent public officials are protected and maintained in their positions, then the fight against corruption, of whatever kind, is doomed to failure.

The above-mentioned examples border on misconduct and negligence. Misconduct in these cases can be construed as a deliberate dereliction of duty on the part of an

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89 Esterhuyse Willie, 1999, "The Many Faces of Corruption", Internet, <http://livenews.24.com>

official who knows that he is acting wrongfully and in breach of duty. Negligence in this case means a departure from the required standard of competence, whether by deliberate action or not. Administrative corruption may thus also be defined as administrative actions based on or influenced by improper considerations or conduct.

It is sometimes assumed that in identifying administrative corruption, one cannot question laws, only the actions of those who are executing them. The result of this assumption is that if an official is carrying out the law, or is acting strictly in accordance with it, then, no matter how unjust the results are to the public, no question of administrative corruption can arise. While it may generally be assumed that illegal actions of public officials are administrative corruption, it does not follow ipso facto that those actions that comply with the law may not be regarded as examples of administrative corruption. The cause of administrative corruption sometimes is the result of 'poor' and 'bad' laws: poor, because they are ambiguous, obscure, self-contradictory or obstructive; bad, because they are discriminatory, biased, unjust and unreasonable.

## POLITICAL CORRUPTION

*Power tends to corrupt and absolute power corrupts absolutely.*  
**Lord Acton**

Following the wider interpretation of corruption, political misbehaviour may also be classified as corruption, although it may not always be criminal in terms of the narrow legal definition of corruption. Political corruption is one of the most loathsome forms of corruption. It is government 'crime' par excellence. It defies the trust put in politicians by their supporters – the voters. There exists a fiduciary relationship between voter and elected political representative. Politicians are elected to serve the interest of the public, not their own or only that of their parties – especially when placed in the position of a cabinet minister responsible for the administration of specific portfolios of government services. Cabinet ministers hold the interest of the people in trust. They are entrusted with power. Unfortunately, as all of us know today, political power corrupts and absolute political power corrupts absolutely. No corruption is more destructive than corruption among politicians. The political history of the world has proven that many (not all) professional politicians are nothing more than unprincipled, opportunistic, power-hunger persons and pathological liars without any integrity.

Elected politicians, especially those in positions of power are exposed to the same temptations to commit corruption as any other full-time public official is. They are all subject to the possibility of committing criminal corruption. Cabinet ministers are also subject to the possibility of committing administrative corruption.

The above-mentioned manifestations of criminal and administrative corruption are all "government crimes" and fall into the same category as political corruption. The following examples of "government crimes" are all manifestations of political corruption:

### **Acting unconstitutionally**

Acting unconstitutionally is ignoring the constitution, which is supposed to be the supreme law of a country. It is ignoring the rule of law, the civil rights and civil liberties of individuals. It is ignoring the constitutional principles of equity and equality before the law. It is adopting laws that are in conflict with the constitution and undermine the human rights of individuals. The most outstanding example was the apartheid laws of the former regime in South Africa, which were possible under a very poor and flexible constitution – a constitution that could be amended at will by an ordinary majority of the ruling party.

The most dangerously political corrupt act is to unilaterally discard the constitution and proclaim a one-party state. This is a sure route to public oppression by government and eventually a devastating civil war.

### **Ignoring democratic principles**

Ignoring the principles of democracy is also political corruption. It is the denying of direct participation by the public in government affairs through regular general elections. It is denying some citizens or classes of citizens the franchise. It is neglecting direct consultation of the public, where practically possible, in government decision making. It is ignoring the general will and values of the people in the decision-making process.

### **Election fraud**

Dishonest conduct, such as illegal voting, false registration of voters and bribery were often used to produce winners in an election. It is also known that returning officers may influence and manipulate election results in the following ways:

- deliberate miscounting of votes;
- destroying of opposition ballots;
- adding premarked ballots for the candidates or party of their choice – i.e. ‘stuffing’ ballot boxes;
- completing ballots where voters have failed to turn up and vote, – so-called ghost voting;
- declaring sound ballots invalid after deliberately defacing them;
- registering voters at fictitious and/or false residential addresses.

It is because of these possibilities that only independent and politically neutral people with integrity should be appointed to an independent electoral commission and as returning officers. Loading such commissions with supporters of the ruling party is tantamount to political fraud.

Political parties and their supporters may also use unethical tactics to secure an election victory. These may include tactics such as spreading rumours and lies about the opponent’s strange character, his alleged association with criminals, thus destroying his character and criminalising him – called character assassination. Another form is having individuals at public meetings heckle or ask embarrassing personal questions.

Associated with this is the tactic of whipping up emotions of voters against opposition parties during election campaigns by deliberately spreading misinformation about the opposition party and uttering hate speech against such party.

*Politics is the gentle art of getting votes from the poor and campaign funds from the rich by promising to protect each from the other.*

**Oscar Ameringer**

Another form of corruption here is ‘vote chasing’ by means of government handouts, such as subsidies to certain classes of producers, extravagant welfare allowances and government pensions to the poor and indigent masses, and irresponsible election promises that cannot be fulfilled. Irresponsible politicians usually make irresponsible election promises that they cannot fulfil – this is tantamount to political fraud.

### **Refusing to accept collective responsibility and accountability**

Political corruption may also include refusal – by, for instance, cabinet ministers – to accept responsibility for any personal misbehaviour and/or administrative corruption for their portfolios and to account in public for such misbehaviour and corruption. It is even more so corrupt if the ruling party’s leadership refuses to bring any corrupt political representative of such party to book and to take disciplinary action against him or her. What is really shocking is the appointment of members of the ruling party, as a committee, to investigate alleged corruption against one of their fellow political representatives, and to find such person not guilty while prima facie evidence indicates the opposite. In such cases independent judicial commissions should be appointed.

### **Refusing to take unpopular but right decisions**

Closely related to vote chasing is the refusal to take right but unpopular decisions. This demands statesmanship and the conviction of supporters that it was the right decision. Voters must be convinced that such decisions are to their benefit in the long run. Statesmanship is more than playing politics; it requires the ability to transcend party politics. It also requires the ability to be able to address both popular and unpopular political issues and to choose the right time and place to do so. A real statesman takes both popular and unpopular decisions and strikes a balance between them in a manner that serves the whole nation – only politicians with integrity will ever become real statesmen.

Another manifestation of a lack of statesmanship is when a political leader, especially the leader of the ruling party, uses his and the party’s power position to enhance the interests of the party and its supporters in a way that is detrimental to the nation as a whole.

### **Ignoring economic principles**

The government’s ignoring of sound economic principles is a corrupt deed. It is corrupt because ignoring such principles can lead to economic decline and bring poverty and distress to the masses of the people. It is politically corrupt to deny individuals their economic freedom, their ownership of private property, their free production processes and to control business rigidly by unnecessary government licensing. Political corruption is also evident where government refuses to privatise government enterprises, or to maintain them at a loss to be recuperated from



taxpayers' money, simply for the purpose of providing jobs, especially when this is aimed at buying votes. Ignoring the demands of global economics would also qualify as political corruption, because, in an open economic system, trends in global economics influence domestic economics to a great measure.

### **Political nepotism**

The word "nepotism" is defined as favouritism shown to relatives and/or friends in conferring offices or privileges. It is derived from the word *nepote*, which means nephew, apparently originally with reference to popes with illegitimate sons, who were called "nephews". Political nepotism can therefore be explained as conferring office, favours and privileges to political "friends"; that is members and faithful supporters of the ruling party.

Politicians have many arguments to justify nepotism. Any person rising to a place of importance in politics will be surrounded, not only by relatives and friends, but also by faithful party supporters looking confidently to him for patronage. Political history leaves faithful party supporters with no doubt that the political leader of the ruling party will provide the needed patronage and that, if jobs or contracts do not exist, they will be created for them. Politicians may grasp the problem themselves, but it is difficult for them to explain to their faithful supporters that their political careers will be threatened and jeopardised, and that to fulfil the demands or expectations of supporters may cost them their jobs. Consequently the life of ministers and other public officials is made burdensome by nagging and increasing demands, as they find themselves entangled in the familiar net of the claims of their political supporters and family obligations.

Political nepotism is one of the most general forms of political corruption. It is based on the old spoils system of the USA, where party political supporters and campaigners in election campaigns were rewarded with appointment in government service. The argument in favour of such political nepotism is that the government must have people in the top echelons of the political and administrative structures that it can trust with the execution of the ruling party's policies.

However, it spells danger when political nepotism and sharing the spoils after winning an election is extended to the appointment of judges, public prosecutors, magistrates, the auditor-general, the public protector, the governor of the Reserve Bank and other such neutral offices. Persons appointed to these positions must be absolutely politically neutral and unbiased and must be appointed on merit in order to serve the people of the country objectively. They are not supposed to serve the government, but to protect the public against public corruption. They must be professional in the sense that their actions must be objective and free from any political influence whatsoever. This also applies to the appointment of permanent constitutional commissions and ad hoc commissions of inquiry, especially those investigating corruption in the public sector.

Appointing party lackeys to key positions of neutrality, such as judges of the Supreme Court and of the Constitutional Court, to favour in a biased manner the interests of the ruling party, or simply to reward them for past loyalty, is political nepotism with a vengeance and a corrupt deed. Of course most governments all over

the world, including some in Africa, have now accepted that family nepotism is wrong, but still embrace political nepotism.

### **Official violence**

South Africa has a long history of government violence against various groups of citizens. In this case a distinction may be drawn between physical violence and structural violence. Physical violence manifests itself in the physical assault of, for instance, peaceful demonstrators protesting against the structural violence that they experience. Brutal and violent actions by the police are the most prevalent form of official violence against members of the public. The irony of the matter is that governments regard this form of physical violence as necessary to maintain law and order.

The only time that physical violence is justified is in cases where peaceful demonstrations turn to hooliganism, looting, unrest and the destruction of public and private property. It is justified also in cases of terrorism and unjustified political revolutions to overthrow the legitimate government of a country.

Structural violence demonstrates itself in depriving the individual of his political and economic rights and freedom – in short his human rights – by way of legislation and other similar oppressive measures. Apartheid and the former apartheid laws of South Africa and the resulting prosecutions for contravening them, as well as imprisonment without trial, are excellent examples of structural violence.

### **Domestic spying**

It is common practice nowadays for governments to spy on citizens with opposite political beliefs, even in cases where such political beliefs pose no threat to the peace. Governments sometimes even spy on academics who criticise their policies and activities. Domestic spying has developed to such an extent in some countries that they become police states of Orwellian proportions, with Big Brother monitoring their citizens' every move.

In spite of the fact that domestic spying on individual citizens violates the privacy of the individual, whose rights are acknowledged and protected by common law and the constitution, governments regard it as essential for national security. Almost all governments have established so-called national intelligence services. In the name of so-called national security, these government organisations spy on individual citizens in the following ways, among others:

- monitoring private telephone calls;
- opening and copying private post;
- bugging offices and homes;
- planting 'spies' among students, teachers and academics at tertiary education institutions;
- opening secret files on so-called suspects, which then contain every possible private detail, for the purpose of building a case against the suspect.

All is being done in the name of public security. This motive is, however, suspect if information on the spying activities is not published from time to time. If domestic

spying is kept secret, one wonders whether its purpose is not to perpetuate the power base of the state bureaucracy vis-à-vis the public.

The most loathsome example of domestic spying is the bugging of the offices of opposition parties.

### **Secrecy, confidentiality and disinformation**

Closely related to domestic spying are so-called secrecy, confidentiality and disinformation. These three forms of political corruption provide a shroud for domestic spying and other serious political crimes against the public. They create a 'safe haven' for all kinds of criminal, administrative and political corruption. They also undermines public responsibility and accountability.

They allows the creation of secret funds that are not subject to public scrutiny and public audit. In such circumstances there is nothing that stops the ruling party and government from using such secret funds for private and party-political purposes. This opens the door for large-scale financial corruption in many ways. Because of this, governments are then forced to take refuge in disinformation and lies. The government and its administration are then forced to lie about the spending of such funds, or worse, they simply do not report anything on the application of secret funds!

Worst of all, it allows the establishment of so-called secret security services for eliminating political opponents. Above anything else, government secrecy and confidentiality pave the way for political tyranny.

### **Foreign intervention**

Governments frequently contravene international law and convention by intervening in the domestic affairs of foreign countries. Foreign intervention may include the following actions:

- surreptitious manipulation of foreign countries, for example, through economic sanctions;
- assassination of heads of government of so-called hostile states;
- spying on foreign countries; and
- secret military or paramilitary operations in support of terrorist or rebellion groups in foreign countries.

The motivations for these objectionable actions are to

- fight hostile ideologies;
- advance mutual foreign trade;
- protect its own citizens and their business interests in foreign countries;
- protect friendly governments in other countries from being overthrown by political upheavals;
- stop threats of aggression on the country's frontiers.

The truth of the matter is, however, that through these kinds of foreign interventions those governments are rather trying to secure their own economic and political power bases in particular regions of the world.

### **Sundry examples**

The above-mentioned examples of political corruption are some of the more serious ones. The list of examples of political corruption is almost inexhaustible. The following are some of the less serious ones:

- demarcating constituency and ward boundaries for election purposes to suit a specific political party – the Americans call this “gerrymandering”;
- the crossing over of an elected political representative to another political party after his election. He deceives his constituency because he switches to the support of an opposition policy, which they did not vote for;
- misbehaviour in parliament – physical attacks on opposition members and calling each other defamatory names – converting parliamentary sessions into undignified political circuses;
- over-sensitivity to criticism and over-reaction on opposition criticism;
- misusing parliamentary privilege to defame and denigrate people or groups in or outside Parliament;
- members of parliament voting themselves excessive remuneration, so-called entertainment allowances and other luxury privileges – the only matter on which all parties always agree;
- allowing themselves luxury government accommodation, luxury government motorcars and cell phones misused for private purposes;
- using government resources for election propaganda and even private purposes.

These are all signs of a bad character and do not become persons claiming to represent the people of a country. They are supposed to set the example of dignity and integrity.

### **RELIGIOUS CORRUPTION**

The most devastating form of public corruption is denying God as the Almighty Creator, Sustainer and Ruler of the universe. Religious corruption takes the form of:

- denying God as the Almighty Controller of the destiny of individuals, groups and nations;
- disregarding his Divine Commandments and ‘suppressing’ religion under the guise of so-called religious freedom;
- disregarding the Golden Rule;
- suppressing religious development by not allowing religious education in government schools under the guise of so-called religious freedom;
- refusing financial support to government-subsidised religious institutions for the rehabilitation of alcoholics and criminals on parole – such as the Salvation Army;
- ignoring God’s commandments by organising political meetings and rallies on the Sabbath;
- using funerals for political purposes; i.e. to whip up the bereaved people’s political emotions.

All these examples may eventually lead to an atheistic state where communism with its atheistic values rules, providing an environment conducive for corruption and immoral conduct.

## **SUMMARY**

Public corruption is the result of the immoral and unethical conduct of politicians and public officials. It is the ignorance of moral values; the ignorance of constitutional, political, economic and social principles, the ignorance of the principles of good governance and of good public administration. Corruption is usually regarded as behaviour by public officials that deviates from accepted norms in order to serve their private ends. The laws relating to corruption try to enforce and enhance those rules society at a particular point considers proper for its orderly functioning. A simplistic definition of corruption would be that it is the abuse of public office for private gain. Corruption is wrongdoing by those in a position of trust.

Defining corruption is, however, not so simple, because corruption can take on many forms – it is a many-faceted phenomenon. Criminal corruption refers to those corruptive deeds that are criminal, i.e. committing an unlawful offence that is punishable in a court of law. Administrative corruption is sometimes referred to as maladministration. Administrative corruption is by definition not necessarily criminal but always unethical. It could include both criminal and unethical actions. Following the wider interpretation of corruption, political misbehaviour may also be classified as corruption, although it may not always be criminal in terms of the narrow legal definition of the term. Political corruption is one of the most loathsome forms of corruption – it is government ‘crime’ par excellence. It defies the trust put in politicians by their supporters – the voters. The world is wide open for political corruption. There are many ways in which political corruption can be committed. Government can commit even religious corruption. The most devastating form of public corruption is denying God as the Almighty Creator, Sustainer and Ruler of the universe.

**Possible examination questions:**

1. What are the main factors and the main reason contributing to corruption? (15 minutes)
2. Define the meaning of corruption. (15 minutes)
3. Explain criminal corruption and its manifestations. (45 minutes)
4. Explain maladministration as corruption and list some of its manifestations. (45 minutes)
5. Explain political corruption and its manifestations. (45 minutes)
6. Explain how governments can be religiously corrupt. (15 minutes)

## CHAPTER FIVE

# BILLS OF HUMAN RIGHTS AS ETHICAL GUIDELINES

### **Study goal**

The purpose of studying this chapter is to understand the nature of the individual's natural and positive human rights expressed in bills of human rights, which should serve as guidelines for ethical conduct. Students must especially understand the South African Bill of Human Rights contained in the Constitution as a value system for ethical conduct. .

### **Learning objectives**

After studying this chapter the student must be able to explain in his/her own words the following:

- The nature of individual human rights as principles of ethical conduct.
- The United Nations Universal Declaration of Human Rights.
- The United Nations Covenant of Civil and Political Rights.
- The African Charter of Human and Peoples' Rights.
- The South African Bill of Human Rights.

## **INTRODUCTION**

A bill of human rights should be the culmination of the common values treasured by a nation. It should reflect the common constitutional, political, economic, social and religious values and principles upheld by the people. Such bill must be a clear reflection of the common philosophy of the nation as a whole. Bills of human rights should be rigid and not subject to the whim of unscrupulous politicians. They should form part of a nation's constitution and should be the sum of the general will and wish of the people tested in a general referendum. They must be adopted with a large majority – at least two thirds of all registered voters. The people must decide what the contents of such bill of human rights should be, not the legislature.

A bill of human rights must be rigid – once agreed upon it should not be changed for simple reasons. If changing circumstances demand a change, the change should be subject to the same rigid procedures as was the process of original approval.

It is the purpose of this chapter to discuss the nature of human rights and to explore and evaluate the United Nation's Universal Declaration of Human Rights, its Covenant on Civil and Political Rights the African Declaration of Human and Peoples' Rights and South Africa's Bill of Human Rights as contained in the South African Constitution.

## THE NATURE OF INDIVIDUAL HUMAN RIGHTS

What are the rights of an individual? What specific areas of individual freedom are defined and guaranteed by the constitutions of modern nations? Almost every modern constitution contains at least some formal guarantees of individual human rights. However, not every formal guarantee in each nation's constitution represents a genuinely protected right of the individuals living under a particular government. But the mere presence of formally guaranteed individual rights in any nation's constitution means that at least the framers of the constitution, for whatever reason, deemed it desirable to pay lip service to the idea of the rights of individuals.

*Human rights are an essential part of government and not an optional extra.*  
**S A Human Rights Commission**

Human rights fall in two general classes: limitations on government and obligations of government. Within this framework one may, among other things, list the following civil rights:<sup>90</sup>

### Limitations on government

- (i) Protections of individual beliefs and expressions, such as
  - freedom of religious worship;
  - freedom of speech;
  - freedom of the press;
  - secrecy of private correspondence; and
  - preservation of distinct sub-national languages and cultures.
- (ii) Protections of individual actions, such as
  - right of assembly;
  - right to petition;
  - universal suffrage;
  - secrecy of votes;
  - prohibition of slavery;
  - practice of chosen profession;
  - privacy of domicile;
  - free movement within and to and from the country;
  - organisation of labour union, trade and professional associations;
  - the right to strike; and
  - collective bargaining.

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90 Ranney, Austin, 1975, *The Governing of Men*, The Dryden Press, Hinsdale, Illinois.



(iii) Protections of those accused of crime, such as the prohibition of

- bills of attainder;
- ex post facto laws;
- guilt by association;
- unreasonable searches and seizures;
- trial without indictment;
- double jeopardy for the same offence;
- coerced confessions;
- excessive bail and fines;
- cruel and unusual punishments;
- extradition for political crimes;
- capital punishment; and
- imprisonment for civil debt.

(iv) Guarantee of writ of habeas corpus, such as the need for

- due process of law;
- speedy and public trial;
- trial by an impartial judge or judges;
- confrontation of hostile witnesses;
- subpoena-of-witness power for the defendant;
- assistance of legal counsel; and
- equality before the law and equal protection of the laws.

(v) Protection of property rights, such as

- just compensation for private property taken for public use,
- government protection of private property rights; and
- protection of patents and copyrights – i.e. intellectual property.

### **Obligations of government**

(i) To provide economic assistance to

- obtain employment;
- guarantee equal pay for equal work, regardless of sex, age, nationality or caste;
- secure minimum wages;
- limit maximum working hours;
- deliver unemployment assistance; and
- provide social security.

(ii) To provide social assistance in

- education;
- prohibition of child labour;
- protection of families, children and motherhood;
- preservation of historical monuments; and
- recreation and culture.

## Natural and positive human rights

Political terminology distinguishes between natural rights and positive rights. An example of a natural right<sup>91</sup> is freedom of speech without interference from government. A natural right is something you have when others are forbidden to act against you. Your natural right to property is respected when others do not steal from you or when government does not confiscate your property. Another example of a natural right is the right to life. The foundation of natural rights is natural law. Natural law is a set of principles based on what are assumed to be permanent characteristics of human nature that can serve as a standard for evaluating conduct and civil laws – i.e. common law. It has already been mentioned that medieval philosophers and theologians, such as Saint Thomas Aquinas and Saint Bonaventure, held that the Ten Commandments of God are part of and indeed the basis of natural law. It is considered fundamentally unchanging and universally applicable. Natural law may be considered an ideal to which humanity aspires or a general fact; the way human beings usually act. The conclusion therefore is that God endowed the individual with natural human rights. Ranney's classification of certain human rights as limitations on governments is an expression of natural human rights based on natural law. In a society based on classical liberal principles, natural rights are all the state recognises. Government should therefore protect you from infringements of your natural rights by others and even by the government.

*Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of government.*

**Vienna Declaration and Programme of Action (1993)**

Natural law is contrasted with positive law, the enactments of government. Positive rights are rights that can only come about when others are coerced into acting. Instead of merely leaving you alone, government is required to act on your behalf. One easy way to remember the difference is that with natural rights you have to refrain from doing something – like stealing, assaulting, raping, etc. Natural rights also mean that one is born free and endowed with certain inalienable rights by the fact of one's birth – simply for being human. With positive rights you are required to do something, like helping to pay for someone's house, education, health care, electricity, water, or whatever. In the first instance you are simply forbidden from doing bad things to people, while in the second instance you are forced into doing "good" things (at least "good" by some bureaucrat's standards) for someone else. Ranney's list of obligations of government is an example of positive rights. In a society based on a socialist dogma of positive rights the government must not simply prevent natural rights violations, but actively promote a specific social agenda. In socialist societies governments must engage in coercive activities that sometimes lead to the negation of natural rights. Positive rights can only exist when government forces other people to provide them,

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91 "Natural rights" are sometimes inappropriately referred to as "negative rights". Natural rights can never be negative.

sometimes indirectly through a progressive income-tax system. Authoritarianism is the logical result of positive rights claims to things like free health care, free education, housing, water, electricity, the right to work, etc. Such things by nature require human effort and if someone has a positive right to these commodities, then somebody else has to supply or pay for them. To call these kinds of rights “positive” is also a misnomer; I would rather call them negative.

Liberal rights are based on equality and thus no true liberal can support positive rights. Socialist rights or positive rights cannot be based on equality. If one has a right to free education, free health care, etc. and the government has the obligation to provide it, then the government is your master and you are its slave – at least with regards to this matter. When government creates so-called second-generation or positive rights, they do so at the expense of first generation natural rights; this is why I would rather call them negative rights.

### **Rights and obligations**

Rights and obligations go hand in hand in all spheres of human action. Therefore, while it is not only necessary but essential that we should intensify and multiply our efforts towards the safeguarding of human rights, we must all, individually and collectively, strive to deepen our consciousness of the duties we owe to each other at all levels. This emphasises that, in discharging our duties and obligations, we should help to safeguard freedom, justice, equity and equality for all. We should all promote and foster human welfare and prosperity in all walks of life, be it social, economic, moral or spiritual. Inaction in this regard is unethical! For evil to triumph, it is only necessary for good men to do nothing.

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

The Universal Declaration of Human Rights adopted by the United Nations on 10 December 1948 embodies the broadest consensus of contemporary civilisation on the subject of human rights.<sup>92</sup> The Declaration of Human Rights does not constitute a law, in the accepted juristic sense of the term. It stands, nevertheless, as a shining milestone along the long and often difficult and weary path trodden by humanity down the road of the world’s political history. Through centuries of suffering and oppression, in striving towards the goal of freedom, justice, equity and equality, battles had been waged in all ages and in many fields of religions and politics, with varying fortunes and success. Each of these battles and the ground won in each, has in turn enhanced the cause of men and women and has contributed towards the formulation and the adoption of the Declaration.<sup>93</sup> This Declaration is entitled to rank with the great historical documents and charters of freedom, such as the Magna Carta and the Habeas Corpus Act of Britain directed towards the same objective.

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92 It is ironic that South Africa, whose National Party government became one of the world’s most notorious oppressors of human rights, was a prominent member of the United Nations at the time, supporting the adoption of this Declaration of Human Rights. South Africa’s then Prime Minister, General J. C. Smuts, played a prominent role in the establishment of the United Nations for the protection of human rights the world over.

93 Bashir Ahmad Rafiq, “Freedom of Conscience” in *The Review of Religions*, August/September 1992.

The disregard and contempt of human rights by governments and politicians had resulted in barbarous government acts, which have outraged the conscience of mankind.

Therefore, the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want must be proclaimed as the highest aspiration of the common people. The Declaration recognises the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. It is essential, if human beings are not to feel compelled to take recourse, as a last resort, to rebellion to overthrow political tyranny and oppression, that the rule of law should protect human rights.<sup>94</sup>

### **THE UNITED NATIONS COVENANT ON CIVIL AND POLITICAL RIGHTS**

Subsequent to the issue of the Declaration of Human Rights in 1948, the United Nations issued the International Covenant on Civil and Political Rights. In the preamble of this document the signatories recognised that the inherent dignity, equality and inalienable civil and political rights of all human beings is the foundation of freedom, justice and peace in the world. They recognised that these rights derive from the inherent dignity of the individual human person. The signatories to the Covenant believe that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy their civil and political rights, as well as his economic, social and cultural rights.

This Covenant was supplemented by the United Nations Declaration of the Rights of Indigenous Peoples. Both documents are worth studying and should be used as ethical guidelines for all governments in their daily dealings with their citizens. They could serve as excellent guidelines for drafting national bills of human rights.

### **THE AFRICAN CHARTER OF HUMAN AND PEOPLES' RIGHTS**

Most members of the (former) Organisation of African Unity south of the Sahara rank almost at the bottom of Transparency International's Corruption Perceptions Index for 1998. Ever since decolonisation, African states have been plagued with corruption of all kinds; political, administrative and criminal. This situation called for the serious consideration of doing something about it. The result was the adoption of a code of conduct for African states.

The African Charter of Human and Peoples' Rights is a declaration of human rights published by the Organisation of African Unity in June 1981. This charter intends to define human rights in the context of the African continent as a whole and from the perspective of an African world-view. In a sense, this Charter seems to be a correction, an interpretation, and an amplification of the United Nations Declaration of Human Rights. It is an application of the United Nations Declaration of Human Rights to the African situation, also taking into account the evolution of the concept of human rights since 1948. Africans wrote it for Africans.

Even though the Organisation of African Unity Charter reaffirms in its preamble and purposes the principles of the United Nations Charter and the Universal

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94 United Nations, "Preamble", Universal Declaration of Human Rights, 1948.

Declaration of Human Rights, many African presidents came to think that the United Nations Declaration, written without their participation, does not reflect the African vision of human rights and is in a certain way another form of colonialism.<sup>95</sup>

But over the course of time the abuse of power by African politicians became more and more problematic, because the oppression of Africans by their fellow Africans became so evident and intolerable. The independent African states were few in the 1960s; their number increased dramatically in the 1970s and the responsibility of Africans for the violation of human rights became much more evident and even increased. This increased so dramatically that the then President of the United States of America, Jimmy Carter, made respect for human rights by African states a *sine qua non* condition for any economic help to third world countries.<sup>96</sup>

Following several conferences, symposia and meetings of the Organisation of African Unity, the African Charter on Human and Peoples' Rights was finally adopted by the 18<sup>th</sup> summit of the Organisation of African Unity in Nairobi, Kenya in July 1981. This document follow more or less the same lines as the United Nations Declaration of Human Rights. The preamble defines the spirit of, on the one hand, the "African tradition" and, on the other hand, the United Nations Declaration of Human Rights and other international conventions such as the United Nations Covenant on Civil and Political Rights.

### **African tradition**

The question is: what is this African tradition on which the African Charter is based? This tradition is based on Ubuntu. Ubuntu is an old African term for "humanness" – for caring and for sharing. Ubuntu as an ideal means the opposite of being selfish and self-centred. It promotes co-operation between individuals, cultures and nations. Ubuntu thus empowers all to be valued to reach their full potential in accord with all around them. An Ubuntu style of government means a "humane" style of government based on collective solidarity and communality rather than individualism and particularity. Ubuntu is a literal translation for collective brotherhood and collective morality. It is best expressed by the Xhosa proverb, "Umuntu ngumuntu ngabantu", which means, "I am, because we are". One has to encounter the collective "we" before one can encounter the collective "I": this means that one is only a person through others.<sup>97</sup>

Ubuntu is an African view, or philosophy of life, that incorporates the values of brotherhood, humanness, morality, honesty and the concern for the social good. Because it grows out of a historical scarcity of resources, Ubuntu values family obligations and the pooling of community resources. One must, however, not see Ubuntu superficially as anti-individual or as merely a social ideology. It should rather be viewed as "the potential of being human". The essence of Ubuntu can be found in a number of common African sayings, such as "A human being can only be a human

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95 Mutombo Nkulu, "The African Charter on Human and Peoples' Rights: An African Contribution to the Project of Global Ethic", Internet, <http://astro.temple.edu/~dialogue/Center/mutombo.htm>

96 Ibid.

97 Mbigi, Lovemore, 1997, *Ubuntu: The African Dream in Management*, Knowledge Resources, Randburg

being through other human beings” and “people live through the help of others”. It is a philosophy based on the principle of one for all and all for one.

The basic principles of Ubuntu can be summarised briefly as follows:

- The spirit of African hospitality.  
When one calls at an African home, one is immediately made to feel welcome. There is instant hospitality. One is invited into the house and given food, drink or water as a token of the spirit of hospitality.
- The spirit of collective trust.  
This is based on the principle of unconditional collective trust among members of the family or community.
- The spirit of unconditional dignity.  
This is based on the principles of unconditional collective acceptance and unconditional collective respect that guarantees the unconditional dignity of the individual.
- The spirit of solidarity.  
African culture is extremely strong on collective solidarity among the African communities. It is based on communal land ownership and collective responsibility for individual welfare in contrast with particular private property ownership and individual responsibility for one’s own welfare.

### **Human obligations**

What is so unique about the African Charter is not only the fact that it took African tradition into consideration, but the fact that Chapter 2 contains a list of “duties” based on the philosophy of Ubuntu. This distinguishes it from other charters, such as the South African Bill of Human Rights, almost over-emphasising only rights without any reference to duties or obligations. It is worthwhile quoting these “duties”:

#### **“Article 27**

1. Every individual shall have duties towards his family and society, the State and other recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of other, collective security, morality and common interest.

#### **Article 28**

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

#### **Article 29**

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family, to respect his parents at all times, to maintain them in case of need.
2. To serve his national community by placing his physical and intellectual abilities at its service.
3. Not to compromise the security of the State whose national or resident he is.

4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened.
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law.
6. To work to the best of his abilities and competence, and to pay taxes imposed by law to the interest of society.
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, contribute to the promotion of the moral well being of society.
8. To contribute to the best of his abilities, at all times and at all levels to the promotion and achievement of African unity.”<sup>98</sup>

This list of duties may not be complete, but it nevertheless sets an example and emphasises the fact that individuals and communities do not have rights only but also concomitant obligations.

### **THE SOUTH AFRICAN BILL OF RIGHTS**

After so many decades of negating the civil and political rights of the majority of the people of South Africa, the National Party, under the leadership of F. W. de Klerk, at last came to its senses and abolished apartheid (which has been branded as “a crime against humanity”) in 1990. Nelson Mandela was freed from gaol and the ANC, SACP and other parties returned from exile. A new Constitution was negotiated which contains a Bill of Human Rights. Apart from other provisions in the Constitution, the Bill of Rights must serve as the basic guideline for public officials and political representatives in executing their obligations and duties to the public.

Section 7 of the Constitution provides:

- (1) “This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The State must respect, protect, promote and fulfil the rights in the Bill of Rights.”

The South African Bill of Rights contains both natural and positive rights. The natural and positive rights contained in the Bill can be classified under the following headings:

#### **Natural rights**

- Equality
- Human dignity
- The right to life
- Freedom and security of the person
- Prohibition of slavery, servitude and forced labour

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98 Internet, <http://astro.temple.edu/~dialogue/Center.htm>

- Privacy of the individual
- Freedom of religion, belief and opinion
- Freedom of expression
- Freedom of assembly, demonstration, picket and petition
- Political rights
- Citizenship
- Freedom of movement and residence
- Freedom of trade, occupation and profession
- Protection of the environment
- Property
- Language and culture
- Cultural, religious and linguistic communities
- Access to information
- Just administrative action
- Access to courts for arrested, detained and accused persons.

### **Positive rights**

- Housing
- Health care, food, water and social security
- Children
- Education
- Labour relations.

### **Evaluation**

Studying the details of each section of the Bill of Rights, one may conclude that, with some exceptions, it complies with the general constitutional, political, economic and social values discussed in the previous chapters. However, there may be some criticism of specific clauses. For instance, the fact that section 11, which provides that everyone has the right to life, has been construed by the Constitutional Court that the death penalty for murder is unconstitutional. Literally this means that murderers have the right to life but their victims not.

Murder is murder! This is God's command: "Do not commit murder" (Exodus 20 verse 13). "Whoever hits a man and kills him is to be put to death" (Exodus 21 verse 12). "When a man gets angry and deliberately kills another man, he is to be put to death, even if he has run to my altar for safety" (Exodus 21 verse 14). Who are we to disregard the commands of God, or do we no longer believe in God?

Arguments have been raised that unborn foetuses have the right to life, while government has concluded that unborn foetuses do not constitute life in terms of the Bill of Rights and that abortions on demand are legal. Resent medical research reports maintain that unborn foetuses can feel pain when aborted. In other words, if this allegation is true, abortion on demand can be tantamount to legalised murder.



*With a total of 1,5 million abortions a year, this would suggest that a society such as Clinton's America, with its polluted and poisoned culture, is ready-made for satanic rituals.*

**Aida Parker**

Another controversy is that the government does not regard the freedom of association naturally to include the freedom of disassociation, and considers legislation to ban all kinds of possible discrimination based on the principle of freedom of disassociation in a free society. There can be no such thing as freedom of association if one is not free to disassociate with someone you choose not to associate with. Freedom of association implies freedom of disassociation. Freedom of disassociation is wrongly construed as discrimination. The section on equality provides that “national legislation must be enacted to prevent or prohibit unfair discrimination.” To construe freedom of disassociation as discrimination is, therefore, incompatible with the principle of freedom of association.

The clause on labour relations (section 23) is biased towards the workers and the legislation on labour relations promulgated in terms of this section, favours only the workers and discriminates against employers. The workers have the right to strike, but the employers have no right of exclusion. Black workers are favoured over white workers in the process of so-called affirmative action – a process of reverse discrimination.

The section on property rights is also very controversial. It opens the way for direct interference by the government in a natural economic right to private ownership of property. It provides for ordinary legislation regarding land reform in a somewhat controversial manner. This right to property is not limited to land only and enables government to legislate on property ownership of whatever kind. The stipulations in this section transform property rights from a natural right to a positive right, where private property owners can be forced by government to forfeit their natural property rights through government confiscation for land reform purposes. Property owners are, however, entitled to “fair” compensation.

The right to demonstration (marching in the streets) is a dubious right, because demonstrations in the form of marching in the streets and closing them off for use by demonstrators only denies other users the right to use such streets during the period of the demonstration. Remember that one person's rights must end where another person's rights begin. Moreover, demonstrations of this nature frequently turn into hooliganism and criminal actions by the so-called “peaceful” marchers.

The provisions on the positive rights are far reaching because they are all subject to government legislation and government coercion. The most important criticism against the Bill of Rights is that it is not rigid enough to protect its integrity against unscrupulous government actions. The right of government to limit the rights certainly opens a backdoor for political corruption.

Section 36 of the Constitution deals with limitations of rights contained in the Bill of Rights. It provides that:

- (1) “The rights in the Bill of Rights may be limited only in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –
  - (a) the nature of the right;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

These are all beautiful and apparently innocent terms, but this clause on the limitation of rights causes grave concern. It makes the Bill of Rights vulnerable. It opens the door for “legitimate” political corruption. The section is tainted with ambiguous terms that may be interpreted to suit the whims of a ruling party supported by a biased constitutional court. Who is going to decide what is reasonable and justifiable – the ruling party by majority vote? These are two very subjective terms subject to the personal interpretations of fallible human beings. Remember, never to trust politicians when it comes to a fight for their political survival. They will do anything to maintain political power. When it comes to a choice of trust between politicians and judges, rather choose the judges, unless they are appointed lackeys of the ruling party.

## **SUMMARY**

To prevent one of the most unacceptable forms of political corruption, namely denying the individual his natural human rights, the world tried to solve the problem by devising so-called bills of human rights. A bill of human rights should be the culmination of the values treasured by a nation. It should reflect the constitutional, political, economic, social and religious values and principles upheld by the people. Such bill must be a clear reflection of the philosophy of the nation as a whole. Human rights fall in two general classes, namely limitations on government and obligations of government. The limitations on government refer to what can be called an individual’s natural rights based on natural law. Natural law is a set of principles based on what are assumed to be permanent characteristics of human nature that can serve as a standard for evaluating conduct and civil laws. Natural rights may be considered an ideal to which humanity aspires or a general fact, the way human beings under normal circumstances usually act. God endowed the individual with natural human rights. Natural law is contrasted with positive law, the enactments of government. Positive rights are rights that can only come about when others are coerced by government into acting. Instead of merely leaving you alone, government is required to act on your behalf and force you to do things you naturally would not do – in this sense so-called positive rights are actually negative in nature.

The disregard of and contempt for human rights by governments and politicians has resulted in barbarous government acts, which have outraged the conscience of mankind. Therefore, the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want must be proclaimed as the highest aspiration of the common people. As far back as 1948 the United Nations published its Universal Declaration of Human Rights that recognises the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. Subsequently to the issue of the Declaration of Human Rights in 1948, the United Nations issued the International Covenant on Civil and Political Rights. This document confirms the inherent dignity, equality and inalienable civil and political rights of all human beings as the foundation of freedom, justice and peace in the world.

Most members of the (former) Organisation of African Unity south of the Sahara ranked almost at the bottom of Transparency International's Corruption Perception Index for 1998. Ever since decolonisation, African states have been plagued with corruption of all kinds: political, administrative and criminal. Jimmy Carter made respect for human rights by African states a *sine qua non* condition for any economic help from the United States of America. This situation called for serious consideration to address the issue of corruption. The result was the adoption of a code of conduct for African states. In July 1981 the Organisation for African Unity adopted the African Charter on Human and Peoples' Rights. This document defines the spirit of, on the one hand, the "African tradition" and, on the other hand, that of the United Nations Declaration of Human Rights. What is so unique about the African Charter is that it took African tradition into consideration and that it also contains a chapter on civil duties. The list of duties may not be complete, but it nevertheless sets an example and emphasises the fact that individuals and communities do not have rights only but also concomitant obligations.

After so many decades of negating the civil and political rights of the majority of the people of South Africa, apartheid was abandoned. A new constitution was adopted containing a Bill of Human Rights that must be respected and followed by public officials and politicians in executing their obligations and duties to the public. This Bill of Rights contains both natural and positive human rights, but lists no civil obligations as the one of the Organisation of African Unity does. The primary criticism against the South African Bill of Rights is that it is not rigidly protected. There are too many escape clauses where the very same human rights can be undermined through ordinary legislation. Section 36 of the Constitution is one such escape clause. It makes the Bill of Rights vulnerable. It opens the door for "legitimate" political corruption. The section is tainted with ambiguous terms that may be interpreted to suit the whims of a ruling party supported by a biased constitutional court.

**Possible examination questions:**

1. Explain the nature of natural and positive individual human rights as principles of ethical conduct. (45 minutes)
2. Write short notes on the United Nations Universal Declaration of Human Rights. (30 minutes)
3. Write short notes on the United Nations Covenant of Civil and Political Rights. (30 minutes)
4. Write short notes on the African Charter of Human and Peoples' Rights. (30 minutes)
5. Evaluate the South African Bill of Human Rights. (45 minutes)

## CHAPTER SIX

# PROFESSIONALISM AND OCCUPATIONAL CODES OF CONDUCT

### **Study goal**

The purpose of studying this chapter is to understand the meaning of professionalism as manifested in its requirements, characteristics and its tenets as well as the need for professionalising the public administration profession. Students must also understand the need for occupational codes of conduct and disciplinary action as an essential requirement for securing ethical conduct.

### **Learning objectives**

After studying this chapter the student must be able to explain in his/her own words the following:

- The meaning of professionalism;
- The requirements for and characteristics of professionalism;
- The tenets of professionalism as manifested in the roles of public officials;
- The need for licensing the public administration vocation;
- Occupational codes of conduct and disciplinary action for public managers;
- The Code of Conduct for the South African Public Service
- Codes of conducts for politicians.

### **INTRODUCTION**

A possible cure for immoral and unethical conduct in the public sector and the prevention of corruption is to create a culture of public professionalism. The foundation on which professionalism is based is an occupational code of conduct, that is, in-house rules regulating the conduct of members of a specific professional group. The idea of promoting professionalism in public administration and management is based on the theoretical separation between politics and administration. In everyday political and administrative practice this theoretical dichotomy is not always feasible. The practice of government professionals continuously adapts to changing political environments. Successful public managers today are deeply involved in, for instance, public policy making, as they negotiate and broker conflicting and diverse community interests. Yet the orthodox view would still have one to believe that there is a dichotomy between politics and administration. One must be very careful about this dichotomy between public administration and politics. Although the public manager may be deeply involved in policy making, which he should be as researcher, advisor and executor of policy, he should not be involved in the final decision making on policy. The final decision on policy should be exclusively the domain of the political institutions such as the minister,

cabinet and parliament. A public manager must never challenge the final decision-making power base of his minister, the cabinet or parliament.

The distance between the public manager's role and politics, as it is performed and as it is still sometimes portrayed, confuses the meaning of professionalism and challenges the connection between public administration and democratic government. The fact that elected political representatives are being appointed to 'administer' government departments further complicates the orthodoxy of separation between public administration and politics. All of this and the need for sound public administration and management complying with the common values of a nation demands professional conduct from both the politicians and public servants.

The purpose of this chapter is therefore, first, to explain and discuss the nature of professionalism and whether the need exists for the licensing of professions in the public sector. Second, the nature and character of occupational codes of conducts will be discussed.

### **THE MEANING OF PROFESSIONALISM**

Defining a profession and professionalism is not easy. The easiest way is perhaps, first, to define a profession, then a professional and lastly professionalism. According to the Concise Oxford Dictionary of Current English, the term profession refers to a vocation of calling, especially one that involves some branch of advanced learning or science. It may also refer to a body of people engaged in a profession, for instance, the law profession, or the engineering profession, or the public administration profession. A professional is a person belonging to or connected with a profession, or a person showing the skill of a competent professional, or a person engaged in a specified activity as one's main paid occupation, or a person worthy of ethical conduct. Professionalism refers to the qualities or typical features of a profession or of professionals, especially its qualities of competence, skills and ethical conduct.

### **REQUIREMENTS AND CHARACTERISTICS OF PROFESSIONALISM**

Perhaps it would be helpful in understanding the meaning of professionalism if one explains the requirements and characteristics of professionalism.

#### **Requirements**

To become a professional and to be professional, one must comply with certain requirements. Professionalism requires

- a corpus of special knowledge developed in a specific occupational field, obtained through research and practical experience;
- advanced education, training and the acquisition of specific skills as a prerequisite for entering the specific occupation or work;
- ethical rules to monitor and govern the conduct of persons doing research and occupying the specific profession;
- high levels of morality and integrity;
- a sound and acceptable public image;
- active support by professional institutions for the development of a profession or a class of professionals;

- an esprit de corps and a feeling of solidarity and pride among researchers, academics and practitioners involved in a specific profession;
- specialisation in the field of occupation;
- a high degree of dexterity, skilfulness, and proficiency in the field of occupation;
- occupational differentiation providing for an occupational class;
- entry requirements, possibilities for career advancement, good compensation and sound conditions of service.

### **Characteristics**

Professionalism has certain characteristics. The following are some examples of these characteristics:

- formal academic education and/or ‘technical’ training at an acknowledged educational institute such as a university, a technikon or college;
- Mastering of an ethos (‘cultural tradition’), i.e. a salient or distinctive attitude and intelligence and proficiency in the subject of the specific professional occupation;
- An intellectual component (brainpower) rather than manual labour (brawn power) at an ‘acceptable’ level according to the requirements of the specific profession;
- The distinctive characteristics of the profession are being complied with;
- Standards of competency prescribed by professional rules can be maintained;
- Availability of advanced education and training for members to improve their qualifications;
- Continuous accumulation of knowledge after acquiring basic qualifications is available through short courses, scientific publications and support by professional associations – members of the professional group are therefore always informed on the latest developments in their professional field;
- Members become more skilled through the practical application of what has been learned through the process of theoretical study, research and application.

The above-mentioned requirements and characteristics provide some perception of what is meant by professionalism. However, a better understanding may be obtained when the tenets of professionalism are explained.

### **TENETS OF PROFESSIONALISM**

The tenets of professionalism manifest themselves in the roles of the public officials, their responsibilities and the values forming the basis of public conduct and activities.

#### **Roles of public officials**

Elected political leaders, expert public administration professionals and citizens share in the formulation and implementation of public policy. Politics and public administration cannot be viewed as completely separate spheres of government activities, even though distinctly defined roles prevail. Except for adherents of public administration orthodoxy, scholars of public administration have given little credence to the idea that politics and public administration represent exclusively separate domains of governance.

Nevertheless, for some observers, the politics and administration dichotomy has provided a simple framework for placing the work of professional public managers

into the context of representative democracy. Consequently, it is important to understand the origins of the dichotomy, which stands as a cornerstone of the orthodox view of public administration. The dichotomy is commonly traced back to Woodrow Wilson's work, "The Study of Administration"<sup>99</sup> and to Leonard Goodnow's influential treatise, "Politics and Administration."<sup>100</sup>

When rethinking professionalism in modern public administration and good governance, one may suggest an alternative to Wilson's dichotomy model. Some later scholars have proposed a model of shared responsibility and co-operative roles for politicians and public managers, eschewing the means-ends dichotomy and separated role expectations between elected politicians and appointed public managers. With this new approach governance is divided into four categories of functions: mission, policy, administration and management. The dichotomy model would have a dominant role for the politicians in the mission statement and policy-making process with the public managers devising strategies for and executing policy in their fulfilling of the administration and management processes. In fact, scholars and practitioners have acknowledged and experienced for years that the lines blur, with public managers playing significant roles in the mission and policy functions, while party political values influence public administration processes.

While public managers have always played important roles in the policy-making processes, the nature of contemporary political, economic and social forces at all levels of government appears to have encouraged the research, formulation, negotiation, brokering and consensus-building skills of today's public managers more than some of their earlier predecessors. It remains a fact, however, that public managers' roles are to research, formulate and advise and to execute policies and strategies decided upon by the political institutions.

Some scholars and practitioners believe that public managers should check on politics, leading the policy process with objective, technical, managerial information and skills activity. But managers should not determine policy in the final instance. Policy-making must be left to the political institutions – this is exactly what they are there for! Yet without professional involvement, policy would lack objectivity and integration, as well as the technical and managerial basis needed for it to be effective. Public managers are expected to be involved in policy formulation and policy advocacy.

*The balancing act a professional public manager performs in this politically charged arena is to manage the power of others without merging himself in the power base in a way that would challenge the elected government body.*

**Larry Brown**

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99 Wilson, Thomas Woodrow, "The Study of Administration" reproduced with permission in Gildenhuys JSH, 1988, *South African Public Administration*, Owen Burgess Publishers, Pine Town.

100 Goodnow, Leonard, 1900, *Politics and Administration*, Macmillan Co., New York.



However, it would be unethical for public managers to usurp the policy-making roles of politicians and for politicians to usurp the management roles of the officials. The constitution of a country normally defines clear-cut roles for parliament, the executive (cabinet) and the administration, but ministers and their chief executive officers, both public officials, must work out a sound working relationship between them. To be professional, appointed public officials must avoid party-political activity and they must always deal with elected public officials professionally. The elected public officials (cabinet ministers) themselves have to have a competent understanding of their roles and the roles of the appointed public officials and they must also not abuse their positions and powers.

### **Role of politics in public administration**

This brings us to the role of politics in public administration and management. If the changing context of public administration has led to more visible roles for public managers in the mission and policy functions of government, it also has created opportunities for more political involvement in internal administration and management activities by politicians. Few public administration professionals might welcome the interest of politicians in administration and management when it affects established work programmes and administrative procedures. Yet, these processes have become systematically responsive to a variety of community political interests even as public managers resist ad hoc interference by politicians.

Whatever some scholars may argue, there still remains a notion of the dichotomy first formulated by Woodrow Wilson. For the purpose of sound relations between public officers and politicians and for the sake of the welfare of the public, there is a need for a dichotomy of some kind.

### **Responsibility of public officials**

The shared authority-responsibility model of governance is valued among public managers as a replacement for the politics and management dichotomy. But in bringing to light the policy-making activities of public administration professionals, questions are raised about the adequacy of formal mechanisms for political oversight and accountability. The rationales used by public managers to justify their roles in the shared authority-responsibility model reflect a sensitivity to the importance of political accountability. The danger is that with clearer managerial involvement in the mission and policy areas, formal political oversight becomes a formality.

The more political influence public managers have in the policy-making process, the more important it is that the premises on which their decisions are based incorporate community values as a supplement to formal political oversight. The goal is to ground the professional roles not only in formal accountability to the cabinet and parliament, but also in a sense of responsibility to a broader range of values. This brings us to two important concepts, those of realism and idealism.

### ***Realism***

As a realist, the public manager's power stems from expertise and experience balanced by the nature of his employment relationship with the government. The realistic public

manager may respond to the wishes of the cabinet or parliament because it is democratically correct or because he actually believes that the elected politicians express the will of the public. But ultimately the public manager responds because the government controls his employment contract.

### ***Idealism***

As idealists, managers are committed to employment relationships as vehicles of accountability. However, idealistic public managers are also committed to understanding and responding to an array of community values that may go beyond efficiency and the practical justification for responsiveness. Commitment to a broader range of public values than those expressed in the governing body provides another source of professional authority for public managers.

*To endorse a philosophy of maintaining a 'low profile and basing your management on survival' is a repudiation of what we as professional public managers should stand for.*

**John Fischbach**

### **The value base of public administration**

The third tenet of professionalism is based on the notion that the public manager's authority is grounded in community values as well as in formal accountability to the cabinet and parliament. It acknowledges the need to identify, understand and work with the conflicting values, which define every community and its political culture. Public management must convert itself from being a profession heavily based on the value of efficiency to one incorporating public values that require new management skills. Effectively dealing with multiple public values shifts the public manager from being a member of a profession of engineers to one of diplomats.

### ***Professional management and efficiency***

Professionalism has always hinged on the ability of public administration professionals to apply their expertise and knowledge, including the rational and analytical problem-solving orientation of public managers. Earlier the role of the public manager as a broker, negotiator, and consensus builder was identified. But without a role orientation towards rational decision-making, the public manager as a co-ordinator seems hardly distinguishable from the politician. It is the extent to which a public manager applies expertise and professionalism to the problems of government that justifies his position. His political skills make him equivalent to other political actors in governance. His technical skills make him different. Many factors in the dynamic political environment force a political role onto the public manager. Nothing will change this; however, managers have to make a hard choice. Either they must enter the game of politics and eschew their technical roles, or they must play the much harder role of exploiting their technical skills to influence politics. This latter role is demanding indeed, but provides the only justification for the public manager as a professional.

*It took heroism to advance efficiency in the midst of corruption, patronage, and favouritism. Equity concerns must be incorporated in today's vision of a community.*

**Curtis Branscome**

### ***Professional management and democracy***

As public managers have become politically visible, legitimacy for their roles has depended upon broadening the authority base of their actions in fundamental values. This is seen as political values influencing the design of management and administrative processes and in altered decision-making premises that have made effectiveness a more congenial term to public managers than efficiency. The idea that public policy making consists of value trade-offs has focused attention on identifying these competing values. It also focuses attention on the role of the public manager in incorporating value trade-offs into the public policy-making process.

In addition to the value of efficiency, three tenets of democratic governance anchor the practice of professional public administration. These tenets support identification of crucial values such as representation, individual human rights and social equity in addition to efficiency. At least three of these values should underpin the fundamental political institutions. The judicial branch of government protects individual human rights; legislatures are constituted as representative bodies; and government departments are created to bring knowledge and expertise systematically to bear on public problems.

*I suspect that even being labelled an efficient professional person will not work to one's best advantage in dealing with the myriad of comments about government being unresponsive, too businesslike, and uncaring of the people that it serves.*

**Donald Blubauch**

### **NEED FOR LICENSING PROFESSIONALS IN THE PUBLIC SECTOR**

The question here is whether there is a real need for licensing professionals in the public sector. Would it really make a difference if public managers were registered as professionals? Licensing or registering people with specific vocational training, such as medical doctors, chartered accountants, engineers, land surveyors, lawyers and town and regional planners is common practice. The argument in favour of licensing these professional vocations is that it protects the public from scoundrels pretending to be experts in a specific field but who cannot deliver services up to the required standards. This could be a hoax, because the real reason is the protection of the professional vocations from free competition. Some of these vocational professions protect their members against free competition by several means, for instance:

- limiting the number of students;

- setting higher than necessary entrance qualifications for the enrolment of students;
- setting high passing rates for entrance examinations, or deciding on the pass rate after the marking of examination papers for a cut-off point to limit the number of entrants to the profession. Depending on the number of entrants to be allowed into the profession for that year, one year the cut-off point could be set at a pass mark of 60% and the next year maybe 70%.

Two professional vocations in South Africa make themselves guilty of this kind of ‘unethical’ conduct – the medical profession and the chartered accountant profession. Other professions usually abide by the normal rules and standards of universities, such as the law, engineering, town and regional planning and land surveying professions.

What these professions actually do is form a ‘monopoly’ and determine so-called recommended tariffs to serve as a ‘guideline’ for their members. This is no more than price maintenance or price binding, because all members usually charge the so-called “recommended” tariff. Clients thus have no choice in the price of such services. Their anti-monopoly argument is that, although clients have no choice between prices, they have a choice between good and bad service delivery. This type of argument is open to suspicion.

Another not-so-ethical practice is that these organised professions convince politicians that the law controlling the profession must reserve certain professional activities for them alone, preventing anybody else from undertaking them. It would be a contravention of the law to practice such activities if one is not registered with the controlling body of such profession. In this way they monopolise business for the profession.

The fact that professionals in these vocational fields are required to register as such has one positive point: it guarantees their clients that they command the right qualifications for the job. However, it does not guarantee quality services in all instances. Another positive point is that they are all bound to a formal code of professional conduct and subject to disciplinary action in cases of unprofessional conduct such as corruption and personal misconduct.

While the medical and chartered accountant professions in fact control both the demand for and the supply of their services, members of other professions, such as the law profession actually have no control over the demand and supply of their services. Students who comply with the minimum university entrance standards are allowed to enrol for study. After qualification at the university with the standard pass mark of 50%, they all qualify to become members of the Bar. They then compete in a free competitive market for clients. The good ones survive and the not-so-good ones don’t. Good lawyers become Senior Advocates and eventually Judges of the Supreme Court – poor lawyers become either politicians or public administrators.

### **Licensing the public administration vocation**

If the above allegations of not-so-ethical conduct of the ‘sublime’ professional vocations are without substantiation, and if it is really true that the purpose of their legal professionalising is to protect the public against inferior quality of services and from unethical conduct, why then is it not necessary to professionalise the public

administration vocation? Surely, it should also be necessary to protect the public against inferior quality of services and from unethical conduct by public managers!

Surely, there is a need for licensing professional public managers. The profession of public administration demands the same requirements and has the same characteristics as any other professional vocation. The profession of public manager, as any other profession, also requires

- a corpus of special knowledge developed in the special field of public administration and management obtained through study, research and practical experience (internship);
- advanced education, training and acquirements of specific technical skills in public administration and management;
- ethical rules to monitor and govern the conduct of public managers;
- high levels of morality and integrity;
- a sound and acceptable public image;
- active support by a professional institution or institutions for the development of the profession of public manager;
- an esprit de corps and a feeling of solidarity and pride among public administration researchers, academics and practitioners;
- specialisation in the field of public administration and management;
- a high degree of dexterity, skilfulness and proficiency in the field of public administration and management;
- occupational differentiation providing for a public administration class, entry requirements, possibilities of career advancement, good compensation and sound conditions of employment.

Formal academic education and training in Public Administration and Management is available at almost all the universities of the world – also in South Africa. This education provides for the mastering of a salient and distinctive attitude and proficiency in Public Administration and Management. Standards of competency prescribed by professional rules can be legislated and maintained for controlling the public administration profession. Advanced education at the postgraduate level is available up to the level of doctorate. There is really no limit for the full development of capable and proficient public managers with integrity. Public administration is a vocational occupation in the same sense as any other vocational occupation, so why not professionalise it like the other vocational occupations?

It is appreciated and sometimes necessary for any public manager of a government department to have expert knowledge of the line function activities of his department. It is, for instance, highly recommendable that the chief executive officer of the Department of Health should have a medical qualification, or that the chief executive officer of a roads department should have a civil engineering qualification. But chief executive officers' main tasks are to manage the activities of their departments. They must, therefore, also be well qualified in Public Administration and Management .

Universities throughout the world and also in South Africa have catered for the need for postgraduate study in Public Administration and Management. Most of them have established postgraduate Schools of Public Administration and Management,

specifically to provide for the needs of public officials advancing to managerial posts to qualify themselves in Public Administration and Management. These Schools of Public Administration and Management are all well equipped to produce the right managerial material.

There could be many reasons why governments have as yet not embarked upon the professionalising of public managers. The three main reasons may be the following:

- if the public administration vocation is professionalised, then it can no longer serve the purpose of political nepotism;
- it may then also no longer serve as a dumping ground or haven for other professionals who could not make it in the private sector under free and fair competition;
- it will jeopardise the government's policy of so-called transformation through affirmative action.

Failing to professionalise the public administration vocation is in itself a form of unethical conduct paving the way for public corruption.

### **OCCUPATIONAL CODES OF CONDUCT AND DISCIPLINARY ACTION FOR PUBLIC MANAGERS**

Throughout the centuries, governments have battled with corruption and maladministration in their public sectors. The French Napoleonic Code of Conduct of 1810 is good evidence of how old the problem of corruption is in the public sectors of the modern world. There is a need for basic values and principles governing public administration in every country of the world. South Africa has identified this need and provided for such values and principles in its Constitution.

#### **Basic values and principles governing public administration**

Section 195(1) of the South African Constitution provides as follows:

“Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) A high standard of professional ethics must be promoted and maintained.
- (b) Efficient, economic and effective use of resources must be promoted.
- (c) Public administration must be development-oriented.
- (d) Services must be provided impartially, fairly, equitably and without bias.
- (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- (f) Public administration must be accountable.
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- (h) Good-human-resource management and career-development practices, to maximise human potential, must be cultivated.
- (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices, based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.”

Although these stipulations in the Constitution contain ambiguous terms that may demand specific specialised legal interpretations, they nevertheless form a sound basis for establishing an ethical code of conduct for public officials. The Public Service Commission responded to these provisions in the Constitution and drafted such code of conduct.

### **The Code of Conduct**

The spate of public corruption in South Africa demanded that the government consider drawing up a code of conduct for public servants. The Public Service Commission drafted and adopted such a Code, which “should act as guidelines to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties” Its aim is also to indicate to government employees “what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life.”

The document issued by the Public Service Commission states that “The purpose of the Code is a positive one, viz. to promote exemplary conduct.” It further states that an employee shall be guilty of misconduct in terms of Section 20(t) of the Public Service Act, 1994, and may be dealt with in accordance with the relevant sections of the Act if he or she contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.” This stipulation is good, because codes of conduct without penalty clauses are not worth the paper they are printed on. Speedy and firm action must be taken against culprits; otherwise, the Code could be regarded as window-dressing. It is worthwhile studying and evaluating the contents of the Code and for that purpose its contents are reproduced. The Code has been divided into five sections, namely the public official’s –

- relationship with the Legislature and the Executive;
- relationship with the public;
- relationship with other employees;
- performance of duties;
- personal conduct and private interests.

### **“Relationship with the Legislature and the Executive**

An employee –

- is faithful to the Republic and honours the Constitution and abides thereby in the execution of his or her daily tasks;
- puts the public interests first in the execution of his or her duties;
- loyally execute the policies of the Government of the day in the performance of his or her official duties as contained in all statutory and other prescripts;
- strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and
- co-operates with public institutions established under legislation and the Constitution in promoting the public interest.”

### **“Relationship with the public**

An employee

- promotes the unity and well-being of the South African nation in performing his or her official duties;
- will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service;
- is polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;
- has regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;
- is committed through timely service to the development and upliftment of all South Africans;
- does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
- does not abuse his or her position in the Public Service to promote or prejudice the interest of any political party or interest group;
- respects and protects every person’s dignity and his or her rights as contained in the Constitution; and
- recognises the public’s right of access to information, excluding information that is specifically protected by law.”

### **“Relationship among employees**

An employee –

- co-operates fully with other employees to advance the public interest;
- execute all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
- refrain from favouring relatives and friends in work-related activities and never abuses his or her authority or influences another employee, nor is influenced to abuse his or her authority;
- use the appropriate channels to air his or her grievances or to direct representations;
- is committed to the optimum development, motivation and utilisation of his or her staff and the promotion of sound labour and interpersonal relations;
- deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language, and refrains from party political activities in the workplace.”

### **“Performance of duties**

An employee –

- strives to achieve the objectives of his or her institution cost-effectively and in the public’s interest;



- is creative in thought and in the execution of his or her duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;
- is punctual in the execution of his or her duties;
- executes his or her duties in a professional and competent manner;
- does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- will recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;
- accepts the responsibility to avail himself or herself of ongoing training and self-development throughout his or her career;
- is honest and accountable in dealing with public funds and uses the Public Service's property and other resources effectively, efficiently, and only for authorised official purposes;
- promotes sound, efficient, effective, transparent and accountable administration;
- in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudiced to the public interest;
- gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and
- honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret."

#### **"Personal conduct and private interests**

An employee –

- during official duties, dresses and behaves in a manner that enhances the reputation of the Public Service;
- acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- does not use his or her official position to obtain private gifts or benefits for himself or herself during the performance of his or her official duties nor does he or she accept any gifts or benefits when offered as these may be construed as bribes;
- does not use or disclose any official information for personal gain or the gain of others; and
- does not, without approval, undertake remunerative work outside his or her official duties or use office equipment for such work."

#### **Evaluation**

The drafting and adopting of this code of conduct was indeed a great step towards curbing corruption in the public sector. There is very little criticism to offer. The most important criticism is the use of ambiguous adjectives that can be interpreted in a positive or negative way, or that could be misinterpreted on purpose to avoid adherence to the spirit of the code. For instance where public managers must be "...reasonably accessible..." to members of the public. When is one reasonably

accessible? The discretion allowed here could be misused to avoid seeing members of the public with cumbersome problems demanding difficult solutions.

The same applies to "...reasonable instruction." Who is going to decide when an instruction is reasonable or unreasonable? Another example is not to "...unfairly discriminate..." against a member of the public. Could there be such a thing as "fair discrimination"? All discrimination by government is unfair! No government discrimination of whatever kind should be allowed!

Another problem is where a public servant is required to use the "...appropriate channels..." to air grievances. What if the channels are blocked? Is there a safe way to "blow the whistle" on fraud and corruption by seniors or politicians without jeopardising one's own position? The matter of withdrawing oneself from any official action or decision-making where a clash of interest may occur is another problem area. Public officials should have no interests whatsoever that could clash with government interests – if so, they are not fit to serve in the public service – it only creates opportunities for corruption.

The matter of confidentiality and secrecy is another cause for concern. Except for military operations, national intelligence operations and sensitive police investigations, nothing should be shrouded in confidentiality and secrecy. Every action of every public servant must be transparent and open to public scrutiny. Secrecy is indeed a shroud for concealing corruption.

The stipulation that no one shall "...without approval..." undertake work outside the public service or use office equipment for such work is opening a backdoor for corruption. Public officials should not be allowed to do any outside work of whatever nature.

The prohibition on the promotion or prejudicing of any political party is good, but a more serious problem is the matter of refraining from "...party political activities in the workplace." Public managers should not indulge in party politics whatsoever – whether inside or outside the workplace. To be really professional they should not even belong to any political party. If they belong to the ruling party, how are they going to resist the temptation to discriminate against members of opposition parties? If they belong to opposition parties how are they going to resist sabotaging the policies of the ruling party? Public managers should be absolutely neutral in relation to party politics and must be willing to serve under any government no matter who the ruling party is! This does not mean that public servants should not vote, or should not have any private political convictions, but they should not allow their political convictions to influence their conduct or interfere in their work. If they feel very strongly about something and it clashes with the policies of government, then the honourable way out is to resign.

This Code of Conduct for public officers forms a sound foundation for professionalising the public manager vocation. This code together with the clauses in the Public Service Act of 1994 controlling public servants and providing for disciplinary action is all that is necessary for creating a professional public administration model for South Africa.

## **CODES OF CONDUCT FOR POLITICIANS**

### **For the national and provincial levels**

For the first time in the history of South Africa, the Constitution provides for the conduct of members of the Executive on both national and provincial level. On the conduct of cabinet members and deputy ministers, section 96 of the Constitution provides as follows:

- “(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Cabinet and Deputy Ministers may not –
- (a) undertake any other paid work;
  - (b) act in anyway that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.”
- Section 136 of the Constitution contains exactly the same stipulations on the conduct of members of provincial executive councils.

### **Executive Members’ Ethics Act, No. 82 of 1998**

The Executive Members’ Ethics Act, No. 82 of 1998 requires the President to publish by proclamation a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which the Cabinet members, Deputy Ministers and Members of the Provincial Executive Councils (MECs) must comply in performing their official responsibilities.<sup>101</sup>

The Act provides that:

- “(2) the code of ethics must –
- (a) include provisions requiring Cabinet members, deputy Ministers and MECs –
    - (i) at all times to act in good faith and in the best interest of good governance, and
    - (ii) to meet all the obligations imposed on them by law, and
  - (b) include provisions prohibiting Cabinet members, deputy Ministers and MECs from –
    - (i) undertaking any other paid work;
    - (ii) acting in a way that is inconsistent with their office;
    - (iii) exposing them to any situation involving a risk of a conflict between their official responsibilities and their private interests;
    - (iv) using their position or any information entrusted to them, to enrich themselves or improperly benefit any person; and
    - (v) acting in a way that may compromise the credibility or integrity of their office or of government.”

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<sup>101</sup> Unfortunately the President has not yet proclaimed such a Code of Ethical Conduct. It is in the process of being formulated and will take some time to be completed and promulgated.

The code of ethics must also include provisions for members to declare their financial interests before assuming office and those acquired after resuming office. These include gifts and any kinds of material benefits received from any person. The code of ethics may prescribe and include any stipulations necessary for its effective implementation.

The Public Protector must investigate any complaint received on alleged breaches of the code. The complaints must be in writing and may be lodged by the President or the Premier of a province or any Member of Parliament or a provincial legislature. The Public Protector must report to the President and the President must report to Parliament, but the law is silent on any sanctions to be taken against a member found guilty of misconduct. Codes of Conduct without proper penal clauses are not worth the paper they are printed on. Executive members found guilty of misconduct should immediately resign from the legislature.

### **For the local government level**

Whereas the formulation of codes of ethical conduct for members of the Executive at both the national and provincial levels is something new in South Africa, it is not new at the local government level. For many decades local government legislation has contained provisions for the disqualification of council members for misconduct. The former United Municipal Executive of South Africa<sup>102</sup> for many decades had a Code of Conduct for Local Authorities.

This Code contains provisions applicable to-

- councillors and officials;
- councillors and their relationship to the public;
- councillors and their relationship to officials;
- the official and his relationship to the council and to individual councillors;
- the official and his relationship to the public.

Schedule 7 of the Local Government Transition Act No. 209 of 1993 contains a Code of Conduct for Councillors referred to in section 16(7) of the Act. This Code contains stipulations on the prohibition –

- of misleading or improper influencing of a council by councillors;
- of putting improper pressure on council employees;
- of the unauthorised disclosure of confidential information;
- of the solicitation for reward, and acceptance of gifts and favours;
- of the personal intervention in a council's administration; and
- of the appropriation or misuse of council property.

In the case of any contravention of this Code of Conduct for Councillors, the Chief Executive Officer shall report the matter to the Council. Section 16(7) of the Act provides for a councillor to be found guilty of misconduct if he or she contravenes or fails to comply with the provisions of the Code of Conduct. Councillors found guilty of misconduct must immediately vacate their positions as councillors.

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102 Now replaced by the National Organisation of Local Government (NALGO).

The above code of conduct for municipal councillors has been replaced by an elaborate code of conduct contained in Schedule 5 of the Local Government Municipal Structures Act, 1998 (Act 117 of 1998).

A warning must be sounded here. If the above codes of conduct are not strictly applied, they could be seen as only a public relations exercise. Proclaiming codes of conduct for public officials and politicians, without creating (through education) an ethos of moral conduct among the public officials and politicians is a sure waste of time. The mere existence of codes of conducts does not guarantee moral conduct.

## **SUMMARY**

A possible cure for immoral and unethical conduct in the public sector and the prevention of corruption is to create a culture of public professionalism. The foundation on which professionalism is based is an occupational code of conduct – that is in-house rules regulating the conduct of members of a specific professional group. Professionalism refers to the qualities or typical features of a profession or of professionals, especially their qualities of competence, skills and integrity. To become professional and to be professional, one must comply with certain requirements. Professionalism also carries certain characteristics. The tenets of professionalism in the public sector manifest themselves in the roles of public officials, their responsibilities and the values forming the basis of public conduct and activities.

Politics and public administration cannot be viewed as completely separate spheres of government action, even though distinctly defined roles prevail. While public managers have always played important roles in the policy-making processes, the nature and contemporary political, economic and social forces at all levels of government appear to have encouraged research, formulation, negotiation, brokering and consensus-building skills among today's public managers. Some scholars and practitioners believe that public managers should keep an eye on politics, leading the policy process with objective, technical, managerial information and skills activities. It would, however, be unethical for public managers to usurp the policy-making roles of politicians and for politicians to usurp the management roles of the officials.

The shared authority and responsibility model of governance is valued among public managers as a replacement for the politics and management dichotomy. The more political influence public managers have in policy-making, the more important it is that the decision-making premises incorporate community values as a supplement to formal political oversight. Public managers must be both realists and idealists. As a realist, the public manager's power stems from expertise and experience balanced by the nature of his employment relationship with the government. As an idealist, the public manager is committed to employment relationships as vehicles of accountability.

Another tenet of professionalism is based on the notion that the public manager's authority is grounded in community values as well as in formal accountability to the cabinet and parliament. Professionalism has always hinged on the ability of public administration professionals to apply expertise and knowledge, including the rational and analytical problem-solving orientation of public managers. It is the extent to which a public manager applies expertise and professionalism to the problems of

government that justifies his position. In addition to the value of efficiency, three tenets of democratic governance anchor the practice of professional public administration. These tenets support identification of crucial values such as representation, individual human rights and social equity.

There is a real need for the licensing of professionals in the public sector. If it is really true that the purpose of the legal professionalising of a vocation is to protect the public, then it is necessary to professionalise the public administration vocation. The public administration vocation complies with all the requirements and characteristics of a profession. Formal academic education in Public Administration and Management is available at almost all universities in the world – also in South Africa. There could, however, be many reasons why governments have as yet not embarked upon the professionalising of public managers. Failing to professionalise the public administration vocation is in itself a form of unethical conduct paving the way for public corruption.

The French Napoleonic Code of 1810 is good evidence of how old the problem of corruption in the public sector is. There is a need for basic values and principles governing public administration. South Africa has identified this need and provided for such values and principles in its Constitution. The spate of public corruption in South Africa since the 1990s demanded that the government consider a code of conduct for public servants. The Public Service Commission responded to this need and drafted and adopted such a code. In spite of some criticism directed against the code of conduct for public officials, it forms a sound foundation for professionalising the public manager's vocation. The Code together with the clauses in the Public Service Act of 1994 controlling public servants and providing for disciplinary action is all that is necessary to professionalise the public manager in South Africa. For the first time in the history of South Africa, the constitution provides for the conduct of the Executive on both the national and provincial levels of government. The constitution indeed provides for the drafting and adopting of a code of conduct for members of the Executive at both levels of government. For many decades local government legislation contained provisions for the disqualification of council members based on misconduct. For many decades the former United Municipal Executive of South Africa had a Code of Conduct for Local Authorities, applicable to both councillors and officials. The Local Government Transition Act of 1993 contains a Code of Conduct for councillors. If these codes of conduct are not strictly applied they could be seen as only a public relations exercise for silencing the government's conscience. Proclaiming codes of conduct for public officials and politicians, without creating (through education) an ethos of moral conduct among the public officials and politicians, is a sure waste of time. The mere existence of codes of conduct does not guarantee moral conduct.

**Possible examination questions:**

1. Define the meaning of professionalism. (15 minutes)
2. Name the requirements for and characteristics of professionalism. (30 minutes)
3. Explain the tenets of professionalism as manifested in the roles of public officials. (50 minutes)
4. Is there a need for licensing public administration vocation or not? Substantiate your answer with sound arguments. (45 minutes)
5. Name a few reasons why governments may be reluctant to license the public administration vocation. (15 minutes)
6. Explain the role of occupational codes of conduct and disciplinary action for public managers in order to maintain ethical conduct. (45 minutes)
7. Explain and evaluate the Code of Conduct for the South African Public Service. (45 minutes)
8. Explain why politicians also need a code of conduct and what rules it should contain. (45 minutes)

## CHAPTER SEVEN

# PUBLIC SERVICE MODELS

### **Study goal**

The purpose of studying this chapter is to understand the criteria for an acceptable civil service and the various public service models one may encounter in the public services of the world. It is imperative to understand which of these models is best equipped for ensuring high moral standards and ethical conduct in the public service. Students must also understand how affirmative action may affect the civil service.

### **Study objectives**

After studying this chapter the student must be able to explain in his/her own words the following:

- The criteria for an acceptable civil service;
- The spoils system;
- The political activist model;
- The scientific bureaucratic model;
- The professional public administration model;
- The cabinet or executive model;
- Affirmative action and its influence on the civil service.

## **INTRODUCTION**

So far we have discussed the matter of ethics, the moral values that should serve as bases for ethical conduct, the culmination of generally accepted moral values in bills of human rights, professionalism, professional codes of conduct, and the need for professionalising the public administration profession. These aspects form the framework for a non-corrupt public administration. The question now is: what type of public service model best fits the demand for a sound and non-corrupt public administration? A public service that will adhere to the normative guidelines for honest, good and sound professional public administration is needed.

For the purpose of this publication the term public service is used to denote all members of the executive (cabinet), judicial and administrative branches of government, because they are all supposed to serve the public. A distinction must be made between public service models and civil service models. When the term civil service is used, it is meant to include only civil servants. Public service models may include cabinet or executive models as well.

A civil service is the name generally given to paid non-military service in non-elective office in the administrative branch of government. The term does not apply properly to service in the legislature, executive (cabinet) and judicial branches. Elected



politicians, ministers of the cabinet and judges are not regarded as civil servants and therefore do not form part of the civil service, but they remain public servants. In certain countries, notably Britain, the term civil services is used to denote only positions in the national government; in others, including France and the United States of America, the term is applied to government positions at all levels, from federal to municipal. In South Africa the term applies to officials on the national and provincial level, but not the municipal level.

There are several public service models, such as the spoils system, the political activist model, the scientific bureaucratic model and the professional public administration model. Another aspect to be discussed is affirmative action, which in South Africa is closely related to the spoils system and the political activist model.

For the sake of the people to be served it is imperative that the most suitable model for the purpose should be chosen. For South Africa it is important to develop a public service model that will contribute towards creating unity in a divided society and to mobilise infrastructure development for the upliftment of the poor and the indigent and most of all to eradicate public corruption.

Before discussing alternative civil service models, one should first identify the criteria for an acceptable civil service.

#### **CRITERIA FOR AN ACCEPTABLE PUBLIC SERVICE**

What any country needs is a non-partisan, impartial, neutral, efficient, effective and a non-corrupt public service, with public servants who are prepared to serve under any ruling party and government irrespective of its ideological philosophy and policies. This type of public service is more so needed in a country like South Africa with its diversity of racial and cultural groups.

South Africa needs public servants of all ranks and in all branches of government who are

- sensitive and responsive to the problems, needs and diversity of the cultural values held by the variety of individuals and groups;
- striving for social equity, fairness, reasonableness and justice in their dealings with individual members of the public;
- aware of and informed on the constitutional, political, economic, social and religious values of the people; and
- prepared to accept and apply these values as fixed guidelines in their daily activities in serving the public.

This means a public service with well qualified, efficient and effective public managers and other supporting staff who understand the purpose of their tasks, namely to serve every individual citizen in a dignified manner, as honestly as possible and to the best of their ability – that is in a professional manner. What is also needed is a non-racial representative public service free from discrimination against and bias towards any individual citizen, irrespective of creed, race or political affiliation, and irrespective of status and position in the community.

## **ALTERNATIVE MODELS**

To decide on a suitable public service model, all possible models should be analysed. Public service models usually adopt the personal attributes, culture and characteristics of the public servants of such models. A whole public service can adopt the characteristics of the political leadership. If the political leadership is of good character, decent, democratic and not arrogant, then the whole of the public service may become decent, democratic and not arrogant. But, if the political leadership is indecent, corrupt, autocratic and arrogant then the civil service may also become indecent, corrupt, autocratic and arrogant. It is a matter of following the example of the leader.

Three main types of public servants may be identified: (i) the political activists, (ii) the scientific bureaucrats and the (iii) professional public managers. From these types of public servants, four types of public service models can be identified, namely –

- the spoils system;
- the political activist model;
- the scientific bureaucratic model; and
- the professional public manager model.

### **The spoils system<sup>103</sup>**

This is a typical example of political nepotism. It is the practice of making appointments to public office and of giving employment in the public service on the basis of political affiliation or personal relationship rather than the fitness or merit of the appointees. It constitutes an extensive form of political patronage. Also included in the spoils system are such practices as favouritism in the awarding of contracts for public works or other public purposes and the expenditure of public funds to the advantage of favoured individuals or groups. This is an excellent example of political nepotism and a form of political corruption.

Under this system elected political representatives in most countries regarded appointive posts under their jurisdiction as political prizes to be distributed among influential or faithful party supporters. They regard this as a matter of sharing the booty after winning the ‘war’ for political power.

### ***British example***

As in most countries of the world, Britain has also been plagued with political nepotism. The first significant departure from this type of political nepotism occurred in Britain in 1855, when examinations were conducted by government order among selected candidates for certain minor positions. The categories of jobs filled in this fashion were gradually extended and in 1870 a policy of open competitive examinations for most posts in the British civil service was adopted.

### ***American example***

Following the example of Britain before its reforms, the spoils system in the USA originated during the colonial period and flourished in state governments after 1800.

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103 Based on the articles on “Civil Service” and “Spoils System” in Microsoft ® Encarta ® 97 Encyclopaedia

Before 1829, however, appointments to the federal service were made on the basis of “fitness for office,” according to a principle enunciated by President George Washington. George Washington set a precedent of appointing federal employees almost solely on the grounds of ability, which is on merit. In accordance with this principle, Washington included in his cabinet Thomas Jefferson and Alexander Hamilton, two men with outstanding ability, who were the leaders of opposing political parties.

Washington’s successors were not so tolerant of opposition members in major public positions. By the time Andrew Jackson came into power, merit figured only secondarily in executive department appointments. During Jackson’s administration the policy of political patronage and nepotism in federal employment was intensified, partly as a result of his belief that rotation of government jobs was an essentially democratic process. What this actually means is that political nepotism is not corruption, but one of the principles of sound democracy. This is, of course, ridiculous!

For many years afterwards virtually all positions in the administrative branch were political plunder, belonging to the political party in power. The abuses inherent in this system, which became known as the spoils system, were especially pronounced during the three decades following 1845.

### *American reforms*

The evils of the system aroused protests and inspired reformers to propose corrective measures. During the latter part of the 19<sup>th</sup> century the scope of political patronage gradually decreased as a result of four principal factors:

- the institution or growth of the civil service based on a merit system of making appointments to positions in government service;
- the institution of the council-manager system of municipal government by several hundred local communities;
- the increasing tendency toward the professionalising of public management; and
- the emancipation of municipal school systems from political control.

The most important action against the spoils system was the passing of the Civil Service Act in 1883 (referred to as the Pendleton Act) as a reaction to the growing public indignation over the spoils system. This act laid the foundation for a new ‘professional’ civil service. Among the major features of the Act are provisions

- for the selection of civil service personnel by means of open competitive examinations;
- for guarantees to civil service employees against coercion in any form for political reasons, or soliciting in government buildings or by other federal employees for political purposes; and
- for allocation to the states and territories, in proportion to their populations, of appointments from lists of eligible applicants to fill positions in the departmental service in Washington D.C.

The administration of the Act was assigned to an appointed Civil Service Commission. Civil service positions not filled by transfer and/or promotion are filled from lists of

qualified candidates in competitive examinations open to all citizens. Appointments are made on merit from the appropriate list of those who passed the examination, without regard to race, religion, colour, nation origin, sex or politics.

The Pendleton Act was not the end of reform. Later legislation was adopted for further reform. For instance, the Hatch Act passed in 1939 prohibits active participation by civil servants in political campaigns. Later on, pay raises, formerly based on length of service only, were tied to performance of senior and middle-level employees. Civil service reform in the USA was not confined to the federal government. Merit systems covering most or all state services exist in effect in all states.

The reform in the USA proved one thing, namely that the spoils system, based on political nepotism, is a corrupt system and that nepotism is nothing but political corruption.

### **Political activist model**

Closely related to the spoils system is the political activist model. The model is based on the political activities of civil servants. It is similarly an excellent example of political nepotism and therefore also a corrupt system. There are two types of politically active civil servants, namely the non-militant civil servant and the militant civil servant.

#### ***Non-militant political activists***

The non-militant political activists are people actively supporting the ruling political party for the sole purpose of enhancing their prospects for promotion or, in the case of aspirant civil servants, to gain appointment. They join political parties as card-carrying members and work in and outside the service for the party. They do this for the purpose of gaining favours from the party leaders – even if it is only to come to the leadership's attention hoping that they will be favoured for promotion and pay increases. Some of these non-militants sometimes join secret organisations through which they hope to advance their prospects. It is outside the service and in meetings of political parties and of secret organisations that they meet politicians on a personal level. It is at these meetings that they develop and foster a close personal relationship with the politicians. They then patiently wait for their eventual reward. The most important personal characteristic of the non-militant political activist is a lack of self-confidence in his personal attributes and his ability to advance on merit. Therefore, non-militant political activists seek to advance their positions through informal political or other channels.

#### ***Militant political activists***

Militant political activists usually originate from non-partisan, neutral and dedicated civil servants. Because of their neutrality towards political party dogma and party political inactivity, and their non-membership of political parties and secret organisations, they are often overlooked for appointment and promotion. They frequently experience that the careers of colleagues, with the same or even inferior qualities and attributes, start rocketing past them to the top by using political party support and their membership of secret organisations for advancing their careers. They frequently

experience their juniors being promoted without merit to higher positions than theirs. Because of this discrimination against them, they soon become disillusioned and frustrated with their careers. Because of this frustration they soon lose their motivation and become passive. Gradually they may start sympathising with opposition political parties and secret organisations not favouring the ruling party. Eventually, they may become militant and start undermining the government in the execution of its policy. They may eventually join revolutionary organisations.

Militant political activists in the civil service may also originate from unselfish service-oriented citizens who are well educated and professionally trained, but who are denied a career in the civil service because of natural characteristics such as race, colour or creed. Because of their frustration, these citizens sometimes become the leaders of revolutionary organisations with the aim of overthrowing the system of blatant discrimination against them, eventually to gain access to a civil service career.

Another kind of militant political activist in the civil service is the less developed, illiterate and unskilled type, who in any event will not gain access to a career in the civil service, apart from becoming a labourer or messenger. This type usually cannot make it in the private sector either, and becomes a part of the frustrated unemployed. They make excellent recruits for revolutionary organisations, with a promise of a utopian civil service career where every one of them will board the gravy train once the revolution has succeeded.

*The lazy and the useless intellectuals, who do not want to study and to undergo training to acquire knowledge and skills, become labourers by force of their own making. The most dangerous of them all are those that eventually become labour union leaders, revolutionaries and politicians.*

**John Guild in 'Some thoughts of my own'**

## **Evaluation**

The political activist model is not suitable for sound democratic government for the following reasons:

- it is based on political expediency rather than efficiency and effectiveness;
- nepotism and patronage instead of merit is the order of the day;
- civil servants are appointed and promoted because of their allegiance to the ruling party or to a dominating secret organisation and not by criteria of competence;
- it destroys the merit system of career development and advancement;
- it creates a civil service which is not representative of all groups in a country;
- public services are distributed on a preferential basis according to political affiliations and support;
- it leads to corruption and maladministration;
- it may eventually cause conflict and political instability, which leads to a complete collapse of a country's economy and public administration; and
- it may eventually lead to severe revolution, civil war and coups d'état.

The most glaring examples of political activist models are the civil services of the communist and socialist countries, where the ruling parties' hierarchies coincide with and run parallel to the civil service hierarchies, with the political parties' officials serving in both at the appropriate common level.

As a result of this situation, the negative social, economic and political conditions in these systems, such as famine, poverty, high inflation, lack of economic growth, high unemployment, corruption, conflict and political instability are apparent and obviously beyond dispute.

### **Scientific bureaucratic model**

The scientific career bureaucrat is an well-educated and well-qualified professional technocrat and an absolute expert in the functional activities of his department. He has a machine-like approach, aiming at the one best way of obtaining results. He believes in a value-free scientific management approach and takes decisions on the basis of rational factors only. The scientific career bureaucrat is dedicated to the goals and objectives of his organisation. He aims at realising the goals of his organisation as efficiently and effectively as possible, irrespective of the impact of the results on the community or on some parts of the community. His or her main purpose is to perpetuate the life of the organisation. Survival of the organisation is the sole aim, because it is the only way of advancing his or her career.

A scientific career bureaucrat is non-partisan, socially and politically insensitive, politically neutral and not responsive to public needs, problems and values. Official duties are conducted in a spirit of impersonality without hatred but also without affection. He or she executes laws and regulations to the letter of their meaning, irrespective of the circumstances of the affected individuals. He sees himself as a successful civil servant when receiving clear audit reports. Internal efficiency and effectiveness is his only measure for enhancing his career. He works only through the official channels for promotion and expects to be promoted on achievement or by seniority or both.

*When you have an efficient government, you have a dictatorship.*  
**Harry S. Truman**

The most negative aspect of the scientific bureaucratic model is that it operates in a closed system aimed at internal effectiveness, efficiency, economy, and productivity and not so much at satisfying the individual's personal and the community's collective needs and values. It concentrates so much on these internal goals and objectives that the needs and values of the people are ignored or grossly neglected. This model ignores the specific individual and general values and wishes of the people.

The inevitable result of this model is a civil service completely in disequilibrium with its environment, acting in disharmony with the wishes of the people. It is an excellent model for doing the right things wrong and the wrong things right. It in some

ways complements the political activist model in that it may also lead to conflict and political instability.

It is quite obvious that the scientific bureaucratic model will never fit the requirements of a modern civil service.

### **Professional public manager model**

A professional public manager is an impartial and administratively competent person, politically neutral, but not politically insensitive and always ready to serve under any government. Such a person is a well-educated and well-qualified public manager, a person with integrity who preserves high moral standards under any circumstances.

A professional public manager –

- is sensitive to the values of individuals and groups and acts responsively to individual problems, needs and values as well as those of specific groups;
- assures programme efficiency and effectiveness in an open system, that is a system where the civil service is in equilibrium with the environment and functions in harmony with the general and particular values and wishes of the community;
- strives for social equity and justice with an ethical content and deploys his efforts on behalf of each individual;
- does not infringe upon the basic liberties of individuals;
- provides means to resolve ethical deadlocks; and
- acts according to a professional code of conduct that would require a commitment to social equity.

Although the professional public manager should be politically neutral, he could never be politically insensitive. The professional public manager must, however, know where to draw the line of involvement; he must recognise the limits of his sphere of political action. There are five unwritten laws that it is imperative should be followed:

- never get involved in party political organisations and election issues;
- leave the public and political stage (radio, television, public meetings) to the politicians;
- cultivate political contacts without striking up personal friendships;
- uphold the interests of the minister and the department without making enemies within the administration; and
- avoid being taken by anyone as the promoter of a politically contentious or controversial policy.

The professional public administration model fulfils the criteria for an acceptable civil service and is based on top civil servants being simultaneously subject to and distinct from the political officials. They are subjugated to the political officials in the sense of providing them with objective advice and the diligent execution of duty without impinging on their final decision-making role. They are distinct from them in that their careers are governed by criteria of competence and merit and not allegiance to the ruling party or a secret organisation.

As already argued, however, there is no clear-cut separation between politics and administration. The classic political-administrative dichotomy is a simplistic caricature, incapable in particular of taking account of the relations established by the professional public manager and his or her minister. A clear division of responsibilities between a minister and a professional public manager is rendered almost impossible by the principle of ministerial responsibility, which make a minister personally answerable to Parliament for all the acts or omissions of his department.

Essentially, there are three aspects to a professional public manager's sphere of political action. He must, first, penetrate the political networks; second, decode and analyse political ideologies; and third, protect his or her minister's image. In addition to understanding politicians, professional public managers must be able to tailor their attitudes to their political beliefs. The core substance of their advice may not change, but they will couch it differently according to the political platform of the party in power and according to whether the minister is a moderate or a radical. The professional public manager therefore needs to be acquainted with political networks and ideologies and must have a keen regard for the minister's public image.

The need for political sensitivity requires the professional public manager to be a well-trained and expert political and policy analyst. The obvious choice for honest, good and sound public administration and management is the professional public manager model.

#### **THE CABINET OR EXECUTIVE MODEL**

There are various forms of executive authority. In the USA the popularly elected President is the chief executive officer of the country. He has the power to "appoint Ambassadors, other public Ministers and consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."<sup>104</sup> In the USA the executive power is vested in the President and his heads of departments forming his cabinet. In Britain the ruling party's leader becomes the Prime Minister and it is the Prime Minister's prerogative to appoint ministers to "administer" the state departments of the British government. In Britain the executive power is vested in the Prime Minister and his or her Executive Council of Ministers.

*Corruption is no stranger to Washington; it is a famous resident.*  
**Walter Goodman (All Honourable Men, 1963)**

In South Africa the leader of the ruling party becomes the State President. The South African President is the head of state and head of the national executive. The executive authority is vested in the President. The President exercises the executive authority,

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104 Section 2. Article II, *The Constitution of the United States of America*, 1787.



together with the other members of the Cabinet. The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers. The President appoints the Deputy President and Ministers and assigns their powers and functions and may dismiss them.<sup>105</sup>

From the above examples one may deduce that the executive authority forms a separate entity and that the State President, Deputy President, Prime Minister and Ministers are not civil servants but politicians elected and appointed as public officers. At the executive level one cannot, however, make a clear-cut division between the political roles of members of the Cabinet and the administrative roles of appointed civil servants. Cabinet members are individually and collectively responsible to Parliament for the efficient and effective administration of government affairs and services to the public. They actually have both a political and an administrative role and responsibility to fulfil.

It is because of this overlap between politics and administration that political nepotism may play a role. First of all, it is the traditional prerogative of the head of government to appoint the ministers of his or her cabinet. It is obvious that for the purpose of loyalty to the policies of the ruling party, the head of the cabinet shall appoint members of the ruling party, or on special agreement, members/leaders of other parties as ministers. The head of cabinet appoints loyal persons to the cabinet in order to ensure that his or her party's policies will be properly executed. For the same reason, ministers sometimes appoint chief executive officers for the departments of their portfolios, who are card-carrying members of the ruling party.

The cabinet system of executive authority is therefore a kind of spoils system, where political nepotism plays a prominent role. This is, however, generally accepted political practice, but when it comes to the appointment of chief executive officers of government departments, political nepotism clashes with the idea of a professional public manager model. Appointment of card-carrying members of the ruling party as chief executive officers and other lower rank public managers is political nepotism par excellence and tantamount to political corruption.

*An honest politician is one who, when bought, will stay bought.*

**Simon Cameron (Altruism and Cynicism)**

Ministers must always remember that they are serving in a public office. As such they transcend party politics in a way and have a broader responsibility than being responsible only to their political party. Once appointed they are supposed to serve the people of the country and not only the members of their political party. A public office, as defined by law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of ministers shall be to the public interests of their country as expressed through the democratic institutions of government. Ministers shall be attentive, fair and impartial in the performance of their functions and, in particular, in

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105 Sections 83, 85 & 91, *The Constitution of the Republic of South Africa*, 1996.

their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

### **AFFIRMATIVE ACTION**

*I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident, that all men are created equal" ... I have a dream that my four little children will one day live in a nation where they will not be judged by the colour of their skin but by the content of their character.*

**Martin Luther King Jr.**

The question to be answered here is whether affirmative action is political nepotism and therefore tantamount to political corruption? It is also a matter of deciding under what circumstance affirmative action is acceptable. Can affirmative action ever be applied without discrimination? The answers to these questions are not easy to arrive at.

Affirmative action is a formal government effort to provide increased employment for women and ethnic groups in order to overcome past patterns of discrimination against them. It strives to increase opportunities for specific groups by favouring them in hiring and promotion, college and university admissions, and awarding government contracts. More broadly defined, affirmative action is the use of positive result-oriented practices to ensure that woman, minorities, handicapped persons and other classes of people will be equitably represented in an organisation. Put another way, affirmative action is any action that is taken specifically to overcome the results of past discriminatory employment practices. Non-discrimination alone is not affirmative action. To be truly affirmative, an employer must take specific steps to remedy the present negative effects of past discriminatory practices and policies.<sup>106</sup>

*God is an equal-opportunity employer.*

**Arlene Anderson Swidler**

Advocates of affirmative action argue that discrimination is, by definition, unfair treatment of people because they belong to a certain group. Therefore, effective remedies must systematically aid groups that have suffered from discrimination. Supporters contend that affirmative action policies are the only way to ensure an integrated society in which all segments of the population have an equal opportunity to share in jobs, education, and other benefits. They argue that numerical goals (quotas) for hiring, promotions and college/university admissions are necessary to integrate fields traditionally closed to women and minorities because of discrimination.

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106 Gildenhuis J. S. H., 1997, *Restructuring your Local Government*, J. L. van Schaik, Pretoria, p. 101.

There are two major examples of affirmative action: affirmative action in the United States of America and affirmative action in South Africa.

### **Affirmative action in the USA<sup>107</sup>**

President Lyndon B. Johnson first used the term “affirmative action” in a 1965 executive order. This order declared that federal government contractors should “take affirmative action” to ensure that job applicants and employees “are treated without regard to race, colour, religion, sex, or national origin.” The original goal of the civil rights movement had been “colour-blind” laws, simply ending a long-standing policy of discrimination did not go far enough for many people. As President Johnson explained: “You do not take a person who for years has been hobbled by chains and ... bring him up to the starting line of a race and then say, ‘you are free to compete with all others’ and still justly believe that you have been completely fair.”<sup>108</sup>

In the United States of America, affirmative action policies were instituted to increase opportunities for minorities – mainly so-called African-Americans – by favouring them in hiring and promotion and the awarding of government contracts. Depending on the situation, “minorities” might include any under-represented group, especially one defined by race, ethnicity or gender. Under the Equal Employment Opportunity Act of 1972, most federal government contractors and subcontractors must initiate plans to increase the proportions of their female and minority employees until they are equal to the proportions existing in the available labour market.

The measures employers and institutions should take to demonstrate their compliance with the law have been subject to controversy.

### ***Controversy over affirmative action in the USA***

The American Supreme Court has defined the scope and limitations of affirmative action policy through a series of legislative initiatives and decisions. The Supreme Court ruling in *Regents of the University of California v. Bakke* (1978) declared that it was unconstitutional for the medical school of the University of California to establish a rigid quota system by reserving a certain number of places in each class of minorities. However, the ruling upheld the right of schools to consider a variety of factors when evaluating applicants, including race, ethnicity, gender and economic status.

In *United Steelworkers v. Weber* (1979) the court ruled that a short-term voluntary training programme that gave preference to minorities was constitutional. The court reasoned that a temporary programme designed to remedy specific past discriminating practices did not unduly restrict the advancement of whites.

In *Fullilove v. Klutznick* (1980) the Supreme Court upheld a provision of the Public Works Employment Act of 1977, which provided a 10% “set-aside” for hiring minority contractors on federally-funded public works projects. The majority of the judges believed that the Congress of the United States has special powers to remedy past and ongoing discrimination in the awarding of federal contracts.

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107 Based on the article “Affirmative Action” in Microsoft ® Encarta ® 97 Encyclopaedia.

108 Ibid.

In the 1980s and 1990s the court struck down a number of affirmative action programmes as unfair or too broad in their application. In *Wygant v. Jackson Board of Education* (1986) the Supreme Court struck down a plan to protect teachers from minority groups from layoffs at the expense of white teachers with greater seniority.

The Supreme Court's ruling in *Ward's Cove Packing Company v. Antonio* (1989) required employees filing discrimination lawsuits to demonstrate that specific hiring practices had led to racial disparities in the workplace. Even if this could be shown, these hiring practices would still be legal, if they served "legitimate employment goals of the employer."

In *Metro Broadcasting v. Federal Communications Commission* (1990) the court upheld federal laws designed to increase the number of minority-owned radio and television stations. These rulings did not signal the end of affirmative action. Meanwhile, Congress responded to a number of conservative rulings by the Supreme Court by passing the Civil Rights Act of 1991, which strengthened anti-discrimination laws and largely reversed the *Ward's Cove* decision.

In the 1990s affirmative action was a highly charged legal and political issue in the USA. In *Adarand Constructors v. Peña* (1995) the Supreme Court examined a federal statute that reserved "not less than 10 percent" of funds provided for highway construction for small business owned by "socially and economically disadvantaged individuals." The court's major opinion overturned the statute and declared that even federal affirmative action programmes are constitutional only when they are "narrowly tailored" to serve a "compelling government interest."

The foregoing brief description of the course of affirmative action in the USA demonstrates a struggle between the courts and the politicians. The courts apparently tried to be judicially as correct as possible, while the politicians tried every time to circumvent court decisions by retaliating through legislation. It showed a sustained effort by government to force society to comply with its affirmative action policies, in spite of its reverse discrimination results and the efforts by the courts to protect the principles of equity and justice. By their legislative retaliation, the politicians actually denied the authority of the Supreme Court of the USA, thereby placing them, in a sense, above the law. The politicians' actions in this regard are under suspicion, because it is general knowledge that the African-American vote in the USA is crucial in presidential elections. Favouring the African-Americans through affirmative action could buy some votes in an election. Using affirmative action for buying votes, is destroying its noble purpose, namely to help people who had been deliberately being discriminated against in the past.

### **Affirmative action in South Africa**

The case of affirmative action in South Africa has a different angle. While affirmative action in the USA is aimed at ending discrimination in employment against a minority, affirmative action in South Africa is aimed at ending discrimination against the majority of the people. South Africa has a dismal record of officially sanctioned and enforced discrimination in relations to its own other-than-white citizens, who make up the vast majority (almost 90%) of its people. This general discrimination has also had profound effects on employment, development and advancement of some of South

Africa's citizens. This legacy of apartheid includes morally unacceptable laws and practices. Fortunately the discriminatory apartheid laws, regulations and practices have disappeared since South Africa became a real democracy in 1994. Almost all, if not all, of the discriminatory apartheid legislation has been repealed. A government policy of affirmative action now applies. Section 195 (1) of the Republic of South Africa Constitution, 1996 provides that: "Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation." Another significant stipulation in this regard is contained in Section 197 (3) of the Constitution which reads: "No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause." (This stipulation in the Constitution, of course, clashes with the idea of the professional public manager model, where it is expected from a public officer never to actively support any political party.) Affirmative action as described in the Constitution is not premised on the American concept of affirmative action being 'racially based remedial action'.

One of the most important guidelines for affirmative action was laid down by the Industrial Court's judgement in *George v. Liberty Life Association of Africa Ltd.*, 1996. The Court ruled that: "Who the beneficiaries of affirmative action should be is intimately connected with the purpose of affirmative action. It is primarily a means of ensuring that the previously disadvantaged are assisted in overcoming their disadvantages so that society can be normalised. Therefore, an employer who applies affirmative action, i.e. by preferring in the case of a transfer or promotion of a candidate who has personally been historically unfairly discriminated against, does not commit an unfair labour practice as regards a person who has not suffered such deprivation." In other words, in the case where two candidates, one previously disadvantaged and one not, apply for a position and their qualifications and abilities (i.e. their merits) are exactly the same, preference must be given to the previously disadvantaged one. This sounds fair and reasonable and complies with the Constitution's requirement that "personnel management practices must be based on ability, objectivity, fairness and the need to redress the imbalances of the past..." Therefore one may deduce that it complies with the principle of justice.

Five major principles for affirmative action can be deduced from the above legislation and Industrial Court case:

- it must be based on merit;
- it must be objective and fair;
- it must redress the imbalances of the past;
- it must not be a racially based remedial action,
- it must not be unfair in favouring only previously disadvantaged persons;
- no party political nepotism must play any role in appointing and promoting officials;

However, these principles raise the moral question of whether, despite the general bar on racial or other discrimination, an employer may act positively and discriminate in

favour of employees or potential employees who have suffered discrimination in the past to the detriment of another employee or potential employee. There is an apparent conflict between two competing values here. These values are –

- the right not to be discriminated against on the grounds of race; and
- the right to be advantaged because of previous disadvantage caused by the institutional system of racial discrimination.

Landman P. in *George v. Liberty Life Association of Africa Ltd* held that: “although affirmative action or positive discrimination is and will be viewed to be discriminatory in its effect against the advantaged, it is not unfair. Non-discrimination is a value and a constitutional right. Affirmative action is a means to an end and not an end in itself.” Landman then went on to explain: “Fairness and equity as well as other considerations, including economic considerations, dictate that affirmative action in South Africa is an imperative which at this stage of our history must be allowed to outweigh the injunction not to discriminate on the basis of race and gender.”

From these arguments it would be fair to deduce the principle that if two applicants comply equally with the job requirements, preference for appointment or promotion should be given to the previously disadvantaged one irrespective of race, gender or physical handicap. However, if someone from a previously disadvantaged group, with fewer relevant attributes and fewer qualifications than required for the job, is favoured for appointment or promotion to the disadvantage of someone who does comply with the job requirements, it would be grossly unfair to appoint or promote the first. It would indeed be unjust and a corrupt deed. What would be more corrupt would be to lower the minimum required standards of qualifications for a post in order to favour someone with lesser merit. Such a policy could only lead to poor performance and maladministration in the end. It would be a case of entrenching incompetence, which is one of the most serious examples of non-criminal corruption. Some call this neo-racism.

What may become a landmark Supreme Court case about affirmative action in South Africa, is the case of the Civil Servants’ Association v. Minister of Justice, 1997. In the Pretoria Supreme Court Judge Swart ruled that the Department of Justice unreasonably discriminated against white males, because the Department wished to fill 30 promotion positions by blacks on a quota basis of four blacks to one white. Judge Swart found that the Department had acted unconstitutionally and discriminated against qualified white lawyers working for the Department for many years. They were not even invited for an interview. The Department’s action is a typical example of reverse discrimination based on racism and derived from a quota system that had been ruled out by the American Supreme Court. The whites were “judged by the colour of their skin and not by the content of their character,” to adapt the words of Martin Luther King Jr. The action of the Minister of Justice is reverse discrimination and racism with a vengeance. If this is allowed to go on, then the whites may one day need a Martin Luther King Jr. to fight for their civil rights in this country.

From its beginnings, here in South Africa and in the USA, affirmative action has been highly controversial. Critics charge that affirmative action policies, which give preferential treatment to people based on their membership of a group, violate the principle that all individuals are equal under the law. These critics argue that it is unfair to discriminate against members of one group today to compensate for

discrimination against other groups in the past. They regard affirmative action as a form of reverse discrimination that unfairly prevents whites and men from being hired and promoted.

A real problem for South Africa arising from reverse discrimination through affirmative action is political nepotism and revenge. In South Africa the discrimination in the past was against the black majority of the people and not the minority, as was the case in the USA. No one in his right mind can ever blame black South Africans for experiencing a feeling of animosity towards whites. However, to indulge in political nepotism on a grand scale by substituting ANC supporters for white males in the public sector is not only tantamount to reverse discrimination, but borders on revenge. It is political nepotism with a vengeance and discrimination against the minority. Affirmative action was never meant to serve the purposes of political nepotism and revenge, or in other words, to serve corruption in the public sector.

## **SUMMARY**

There are many public service models, for instance the spoils system, the political activist model, the scientific bureaucratic model and the professional public manager model. The first three models are unacceptable, because they are all corrupt. What any country needs is a non-partisan, impartial, neutral, efficient, effective and non-corrupt public service, with public servants who are prepared to serve under any ruling party and government irrespective of its ideological philosophy and policies. This type of public service is more so needed in a country like South Africa with its diversity of racial and cultural groups. What is needed is a non-racial representative public service free from discrimination against and bias towards any individual citizen, irrespective of creed, race or political affiliation, and irrespective of status and position in the community.

The only model that complies with these requirements is the professional public administration model. A professional public manager is an impartial and administratively competent person, politically neutral but not politically insensitive and always ready to serve under any government. He or she is a well-educated and well-qualified public manager, a person with integrity who preserves high moral standards under any circumstances.

The cabinet system of executive authority is a kind of spoils system where political nepotism plays a prominent role. Ministers are appointed from among the leadership of the ruling party. This is, however, generally accepted political practice, but when it comes to the appointment of chief executive officers of government departments, political nepotism clashes with the idea of a professional public manager model. Appointment of card-carrying members of the ruling party as chief executive officers and other lower-rank public managers, is political nepotism par excellence and tantamount to political corruption.

Affirmative action is a formal government effort to provide increased employment for women and ethnic groups in order to rectify past patterns of discrimination against them. It is a process for implementing an equal employment opportunity policy and programme. It strives to increase opportunities for specific groups by favouring them in hiring and promotion, college/university admissions, and awarding government contracts. It is indeed a process of discrimination, if it is not based on merit.

**Possible examination questions:**

- 1 Explain the criteria for an acceptable civil service model. (10 minutes)
- 2 Give a brief description of the history of the spoils system. (15 minutes)
- 3 Describe the political activist model. (20 minutes)
- 4 Describe the scientific bureaucratic model. (20 minutes)
- 5 Explain why the political activist and the bureaucratic models do not comply with the criteria for an acceptable civil service model. (20 minutes)
- 6 Explain the professional public manager model. Why would you recommend this model as the ideal model? (45 minutes)
- 7 Describe the cabinet or executive model and explain why it will always be akin to the spoils system. (30 minutes)
- 8 Compare the American and South African experiences with affirmative action and explain its influence on public ethics. (50 minutes)



## CHAPTER EIGHT

# THE BATTLE AGAINST CORRUPTION

### **Study goal**

The purpose of studying this chapter is to understand the need for and the worldwide battle against corruption as revealed by the actions of the United Nations and Leonard Swidler's attempts to formulate a universal declaration of a global ethic. It is also to understand the anti-corruption strategies formulated by the international Global Forum on Fighting Corruption.

### **Learning objectives**

After studying this chapter the student must be able to explain in his/her own words the following:

- The United Nation's International Code of Conduct for Public Officials;
- Leonard Swidler's requirements and principles for a Universal Declaration of Global Ethic;
- The Anti-corruption Strategies suggested by the Global Forum on fighting Corruption.

## **INTRODUCTION**

Human beings are the product of cultures, habits, environmental circumstances, religion, media influence and ethics. All these influence their behaviour and determine their attitudes to matters such as corruption. If civilised societies want to correct and control corruption that threatens to erode the social fabric, perhaps all and each of these areas need to be addressed in the battle against corruption. Education in the civic and ethical fields should face up to the challenge. Corruption is a manifestation of the degeneration of morality, a return to the instinct of egoism and greed. Instinct can only be tamed and controlled by an incessant educational programme in good moral behaviour, ethical standards and in civic norms.

A society built on the positive values of strong morality and good ethical standards is a caring society that thrives on harmony and solidarity. Such a society is one with a clear objective and a long-term vision; such a society is one that believes that corruption upsets moral values and frustrates its aims. History has taught us that it is the belief in a purpose, rather than a strong hand, that can really fuse and hold society together.

It is not only South Africa that suffers under the burden of public corruption. The whole world is beleaguered with bad politicians and public officials. It seems from history that from the earliest times governments have suffered from corruption in almost any form. Cynics came to regard politics and bureaucracy as bad – both are indispensable for community life but hold very little good. The very old Russian proverb, "Politics is a rotten egg; if broken, it stinks" is typical of what history thinks

of politics and politicians. For some people “bureaucracy” means a kind of governmental sickness whose leading symptoms are the addiction of public officials to tortuous procedures, buck-passing, senselessly rigid rules and poor manners – everything summed up in the term “red tape.”<sup>109</sup> On the other hand, it is also good to know that there are many politicians and other public officials with integrity who are not dishonest and corrupt, and who are seriously trying to combat public corruption. Even the government of South Africa is battling to contain public corruption.<sup>110</sup>

*Even the Great States cannot eradicate corruption.*  
**Eduard Shevardnadze**<sup>111</sup>

There is a global concern about corruption. On the religious level Leonard Swidler is the driving force behind formulating a “Universal Declaration of a Global Ethic“. In its action against corruption, the United Nations adopted a resolution in 1997 in which the General Assembly expressed its concern “at the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardise social, economic and political development.” The Council of Europe has set up a “Programme of Action against Corruption”. A “Global forum on Fighting Corruption“ was established in the USA. The Vice-President’s office announced and held the “Vice President’s Conference on Fighting Corruption and Safeguarding Integrity among Justice and Security Officials” on 24-26 February 1999.<sup>112</sup> This was the world’s first conference to target corruption specifically among police, prosecutors, judges, military personnel, customs officials, border guards, financial regulators and budget and procurement officials. Recently a similar conference was held in South Africa. South Africa is thus not alone in its battle against corruption.

All these efforts produced strategies for combating public corruption. It may be worthwhile to explore these suggestions.

#### **THE UNITED NATION’S INTERNATIONAL CODE OF CONDUCT FOR PUBLIC OFFICIALS**

Concerned with the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardise social, economic and political development, the General Assembly of the United Nations adopted in 1996 an International Code of Conduct for Public Officials. The reproduction and dissemination of this document is widely encouraged by the

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109 Ranney, Austin, 1975, *The Governing of Men*, The Dryden Press, Hinsdale, Illinois, p. 414.

110 See, for instance, Thabo Mbeki’s statement to the National Anti-Corruption Summit held in Cape Town on April 14, 1999.

111 Georgian President and former Minister of Foreign Affairs of the USSR under the presidency of Michael Gorbachev. Statement made on “Hard Talk”, BBC World 21 July 2000.

112 Delegates from the South African government attended the conference.

United Nations, apparently with the hope that it will support the global battle against corruption. It may be worthwhile studying the contents of this code reproduced here:

“I. GENERAL PRINCIPLES

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.
2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.
3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual, or otherwise abuse the power and authority vested in them.

II. CONFLICT OF INTEREST AND DISQUALIFICATION

4. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.
5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible or perceived conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.
6. Public officials shall at no time improperly use public money, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.
7. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

III. DISCLOSURE OF ASSETS

8. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouse and/or dependants.

#### IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials should not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

#### V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

#### VI. POLITICAL ACTIVITY

11. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.”

### **Evaluation**

This model code of conduct of the United Nations possibly covers almost all examples of public corruption. It must have been based on empirical experience from all over the world. If one compares it with the manifestations of public corruption, cited earlier in this book, it provides a sound framework and guide for any government to establish its own code for ethical conduct. A point of critique one may offer is on the code on confidential information, where one must sound a warning that confidentiality and secrecy are a sure breeding ground for public corruption. This clashes with one of the most important principles of real democracy, namely that all government activities must be transparent. The lack of transparency provides a cover for corruption. One does, however, realise that there may be some activities that should be kept secret or confidential, but then only for a limited period.

Another point of criticism is on the code on political activities. It remains the ideal that public officials, excluding cabinet ministers appointed from members of the ruling party, should never be members of any political party and that they should never become involved in party politics of whatever nature. This clashes with the ideal of a professional public manager model.

### **TOWARD A UNIVERSAL DECLARATION OF A GLOBAL ETHIC**

Leonard Swidler based his argument on the need of for a global ethic on the fact of all humankind's interdependence and the fact that any significant part of humanity could precipitate the whole of the world into a social, economic, nuclear, environmental or other catastrophe. There is a growing necessity for inter-religious, inter-ideological, inter-cultural dialogue and to base discussions on how people should act in relationship to themselves, to other persons and to nature within the context of reality's under-girding, pervasive, overarching source, energy and goal, however understood. In brief, Swidler's proposition is that 'humankind increasingly desperately needs to engage in a dialogue on the development of, not a Buddhist ethic, a Christian

ethic, a Marxist ethic, etc., but a global ethic” He believes that a key instrument in that direction will be the creation of a Universal Declaration of a Global Ethic.

There must be global consensus on the fundamental attitude toward good and evil and the basic and middle principles to put it into action. This ethic must be global. Swidler’s view is that it will not be sufficient to have a common ethic for Westerners, for Africans, or for Asians, etc. It must encompass all religions and cultures. This Universal Declaration of a Global Ethic must be arrived at by consensus through dialogue. Unilateral attempts at the imposition of a unitary ethics have inevitably fallen dismally short of global acceptance. The most recent failures, according to Swidler, “can be seen in the widespread collapse of communism, and in the inverse way in the resounding rejection of secularism by resurgent Islamism.”

The need for a global ethic is most urgent. Humankind no longer has the luxury of letting such an ethic grow slowly and haphazardly by itself.

### **SWIDLER’S UNIVERSAL DECLARATION OF GLOBAL ETHIC<sup>113</sup>**

Swidler’s proposal is based on the presupposition of affirmation of human rights, respect for the earth and support of not only human rights but also for corresponding responsibilities. The fact that he included human responsibilities (obligations), distinguishes his proposed Code from all other bills of human rights, especially that of South Africa, that concentrate only on so-called civil rights but not on civil obligations. One cannot enjoy civil rights without also having concomitant civil obligations.

#### **Presuppositions**

Swidler lists the following five general presuppositions that are indispensable for a global ethic:

- Every human possesses inalienable and inviolable dignity. Individuals, governments, and other social entities are obliged to respect and protect the dignity of each person.
- No person or social entity exists beyond the scope of morality. Everyone is obliged to do good and avoid evil.
- Humans are endowed with reason and conscience – the great challenge of being human is to act conscientiously. Communities, governments and other social organisations are obliged to protect and foster these capabilities.
- Communities, governments and other social organisations, which contribute to the good of humans and the world, have a right to exist and flourish. All should respect this right.
- Humans are a part of nature, not apart from nature. Ethical concerns extend beyond humanity to the rest of the earth and indeed the cosmos.

#### **A fundamental rule**

The fundamental rule on which Swidler based his proposal for a global code of ethic is the so-called ‘Golden Rule’: “What you do not wish done to yourself, do not do to

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113 Swidler, Leonard, ‘A Universal Declaration of a Global Ethic’, 1999, Internet, Web site: <http://astro.temple.edu/~dialogue/Center/declare1.htm>

others”, or in positive terms, “What you wish done to yourself, do to others.” This ‘golden rule’, is based on the Great Commandment: ‘Love the Lord your God with all your heart, with all your soul, and with all your mind.’ This is the greatest and the most important commandment. The second most important commandment is like it: ‘Love your neighbour as you love yourself. The whole Law of Moses and the teachings of the prophets depend on these two commandments’ (see Matthew 22:37). As explained in Chapter Three, the Golden Rule has been affirmed in many religious and non-religious ethical traditions for thousands of years.

Swidler distinguishes between two types of principles on which a code should be based – basic principles and middle principles.

### **Basic principles**

The following are the eight basic ethical principles:

1. Because freedom is of the essence of being human, every person is free to exercise and develop every capacity, so long as it does not infringe on the rights of other persons or express a lack of due respect for things living or non-living. In addition, human freedom should be exercised in such a way as to enhance both the freedom of all humans and due respect for all things, living and non-living.
2. Because of their inherent equal dignity, all humans should always be treated as ends, never as mere means to an end. In addition, all humans in every encounter with others should strive to enhance to the fullest the intrinsic dignity of all involved.
3. Although humans have greater intrinsic value than non-humans, all such things, living and non-living, do possess intrinsic value simply because of their existence (as creatures of God) and, as such, are to be treated with due respect. In addition, all humans in every encounter with non-humans, living and non-living should strive to respect them to the fullest of their intrinsic value.
4. As humans necessarily seek ever more truth, so too they seek to unite themselves, that is, their “selves”, with what they perceive as good – in brief, they love. In addition, as with the Golden Rule, this loving/loved “self” needs to continue its natural expansion/transcendence to embrace the community, the nation, the world and the cosmos.
5. Thus true human love is authentic self-love and other-love co-relatively linked in such a way that ultimately it is drawn to become all-inclusive. In addition, this expansive and inclusive nature of love should be recognised as an active principle in personal and global interaction.
6. Those who hold responsibility for others are obliged to help those for whom they hold responsibility. In addition, the Golden Rule implies: if we were in serious difficulty in which we could not help ourselves, we would want those who could help us to do so, even if they held no responsibility for us. Therefore, we should help others in serious difficulty who cannot help themselves, even though we hold no responsibility for them.
7. Because all humans are entitled to hold their religion and belief as true, every human’s religion or belief should be granted its due freedom and respect.

8. Dialogue is a necessary means whereby women and men learn to respect the other, ceaselessly to expand and deepen their own explanation of the meaning of life and to develop an ever broadening consensus whereby men and women can live together on this globe in an authentically human manner.

### **Middle principles**

The following “Middle Ethical Principles“ are in fact those that underlie the 1948 United Nations Universal Declaration of Human Rights formally approved by almost every nation in the world.

1. Legal Rights: Because all human beings have an inherent equal dignity, all should be treated equally before the law and provided with its equal protection.  
Responsibilities: All individuals and communities should follow all just laws, obeying not only the letter, but also most especially the spirit of the law.
2. Rights concerning conscience and religion or belief: Because humans are thinking, and therefore essentially free-deciding beings, all have the right to freedom of thought, speech, conscience and religion or belief.  
Responsibilities: All humans should exercise their rights of freedom of thought, speech, conscience and religion or belief, in ways that will respect themselves and all others and strive to produce maximum benefit, broadly understood for both themselves and their fellow humans.
3. Rights concerning speech and information: Because humans are thinking beings with the ability to perceive reality and express it, all individuals and communities have both the right and the responsibility, as far as possible, to learn the truth and express it honestly.  
Responsibilities: Everyone should avoid cover-ups, distortions, manipulations of others and inappropriate intrusions into personal privacy; this freedom and responsibility is especially true of the mass media, artists, scientists, politicians, public officials, and religious leaders.
4. Rights concerning participation in all decision-making affecting oneself or those for whom one is responsible: Because humans are free-deciding beings, all adults have a right to a voice, direct or indirect, in all decisions that affect them, including a meaningful participation in choosing their leaders and holding them accountable, as well as the right of equal access to all leadership positions for which their talents qualify them.  
Responsibilities: All humans should strive to exercise their right, and obligation, to participate in self-governance as to produce maximum benefit, widely understood, for both themselves and their fellow humans.
5. Right concerning relationship between women and men: Because women and men are inherently equal, all men and women have an equal right to the full development of all their talents as well as the freedom to marry, with equal rights for all women and men in living out or dissolving marriage.  
Responsibilities: All women and men should act to each other outside of and within marriage in ways that will respect the intrinsic dignity, equality, freedom and responsibilities of themselves and others.

6. Rights concerning property: Because humans are free, bodily and social in nature, all individual humans and communities have the right to own property of various kinds.

Responsibilities: Society should be so organised that property will be dealt with respectfully, striving to produce maximum benefit not only for the owners but also for their fellow humans, as well as for the world at large.

7. Rights concerning work and leisure: Because to lead an authentic human life all humans should normally have meaningful work and recreative leisure, individuals and communities should strive to organise society so as to provide these two dimensions of an authentic human life both for themselves and all the members of their communities.

Responsibilities: All individuals have an obligation to work appropriately for their recompense and, with all communities, to strive forever more creative work and re-creative leisure for themselves, their communities, and other individuals and communities.

8. Rights concerning children and education: Children are first of all not responsible for their coming into existence or for their socialisation and education; their parents are. Where for whatever reason the parents fail, the wider community, relatives and civil community, have an obligation to provide the most humane care possible, physical, mental, moral/spiritual and social, for children. Because humans can become authentically human only through education in the broad sense, and today increasingly can flourish only with extensive education in the formal sense, all individuals and communities should strive to provide an education for all children. Education should also be provided for adult women and men. The education must be directed to full development of the human person, to the respect for human rights and fundamental freedoms, to the promotion of understanding, to dialogue and friendship among all humans, and respect for the earth.

Responsibilities: All individuals and communities have the obligation to contribute appropriately to providing the means necessary for this education for themselves and their communities, and beyond that to strive to provide the same for all humans.

9. Rights concerning peace: Because peace as both the absence of violence and the presence of justice for all humans is the necessary condition for the complete development of the full humanity of all humans, individually and communally, all individuals and communities should strive constantly to further the growth of peace on all levels, personal, interpersonal, local, regional, national and international, granting that:

- (a) the necessary basis of peace is justice for all concerned;
- (b) violence is to be vigorously avoided, being resorted to only when its absence would cause greater evil;
- (c) when peace is ruptured, all efforts should be bent to its rapid restoration – on the necessary basis of justice for all.

Responsibilities: It should be recognised that peace, like liberty, is a natural right that should be constantly cultivated, and therefore all individuals and communities should make the necessary prior efforts not only to avoid its break-down but also to develop its steady development and growth.



10. Rights concerning the environment: Because things, living and non-living, have an intrinsic value simply because of their existence, and also because humans cannot develop fully as humans, or even survive, if the environment is severely damaged, all individuals and communities should respect the ecosphere within which “we all live, move and have our being” and act so that
- (a) nothing, living or non-living, will be destroyed in its natural form except when used for some greater good, as, for example, the use of plants or animals for food;
  - (b) if at all possible, only replaceable material will be destroyed in its natural form.
- Responsibilities: All individuals and communities should constantly be vigilant to protect our fragile universe, particularly from the exploding human population and increasing technological possibilities that threaten it in an ever-expanding fashion.

### **Evaluation**

Swidler’s initiative must be supported by all means. It is the first worldwide effort to bring all the nations of the world to their senses. He effectively shows that in spite of the world’s religious beliefs and cultural diversification, a core of religious and social values has existed since time immemorial, supporting the Golden Rule. Swidler’s greatest contribution is that he draws the attention of the world to the fact that humans do not have rights only, but also concomitant obligations, or responsibilities, as he prefers to call them. He unveils the truth that for every civil right there is a civil obligation. Individuals who do not accept their obligations towards other individuals, the community and the state, have no right to demand civil rights or so-called human rights.

In spite of the statement of Theodore Schick Jr. that it is possible to have a universal morality without God, this initiative of Swidler demonstrates the need for more religious and moral education. Schick Jr. argues that what our society really needs is not more religion, but a richer notion of the nature of morality.<sup>114</sup> How can one become a moral being without religion? Religious fundamentalists believe that only through reaching the soul of the human being through religious and moral education would we be able to build a better world, a world of high spiritual values and morality, a world free from crime and corruption. The nations of the world must return to compulsory religious education in schools, because it is through religious education that high standards of individual morality can be developed.

### **ANTI-CORRUPTION STRATEGIES**

The Global Forum on Fighting Corruption published a document with a list of guiding principles as anti-corruption strategies. The aim of these guiding principles is to promote public trust in the integrity of public officials by preventing, detecting and prosecuting official corruption and unlawful, dishonest and unethical behaviour. It is anticipated that these guiding principles will be implemented by each government in a manner appropriately tailored to the political, legal, economic and cultural circumstances of the country. The purpose of the document is not to prescribe a specific solution to corruption, but rather to offer a list of potentially effective corruption-fighting practices. It is

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<sup>114</sup> Schick, Theodore Jr., “Morality Requires God...or Does It?” in *Free Inquiry*, Volume 17, Number 3.

intended to help guide and assist governments in developing effective and appropriate means to best achieve their specific public integrity ends.

The following 12 objectives, with concomitant effective measures, are suggested by the Forum as strategies to combat corruption:

**1. Establish and maintain systems of government hiring of officials that assure openness, equity and efficiency and promote hiring of individuals of the highest levels of competence and integrity.**

Effective measures for this objective include systems:

1. for equitable compensation adequate to sustain appropriate livelihood without corruption;
2. for open and merit-based hiring and promotion with objective standards;
3. which provide the assurance of a dignified retirement without recourse to corruption;
4. for thorough screening of all employees for sensitive positions;
5. for probationary periods after initial hiring; and
6. which integrate principles of human rights with effective measures for preventing and detecting corruption.

**2. Adopt public administration measures that affirmatively promote and uphold the integrity of public officials.**

Effective measures for this objective include:

1. an impartial and specialised institution of government to administer ethical codes of conduct;
2. training and counselling of officials to ensure proper understanding of their responsibilities and the ethical rules governing their activities as well as their own professionalism and competence;
3. training to address issues of brutality and other civil rights violations that often correlate with corrupt activity among public officials;
4. managerial mechanisms that enforce ethical and administrative standards of conduct;
5. systems of recognising employees who exhibit a high degree of personal integrity or contribute to the anti-corruption objectives of their institutions;
6. personnel systems that include regular personnel rotation of assignments to reduce insularity that fosters corruption;
7. systems to provide appropriate oversight of discretionary decisions and of personnel with authority to make discretionary decisions;
8. systems that hold supervisors accountable for corruption control;
9. positive leadership, which actively practices and promotes the highest standards of integrity and demonstrates a commitment to prevent and detect corruption, dishonesty and unethical behaviour;
10. systems for promoting the understanding and application of ethical values and the standards of conduct required;
11. mechanisms to support public officials where there is evidence that they have been unfairly or falsely accused.

**3. Establish ethical and administrative codes of conduct that prescribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity.**

Effective measures for this objective include:

1. prohibitions or restrictions against officials participating in official matters in which they have a substantial direct or indirect financial interest;
2. prohibitions or restrictions against officials participating in official matters in which persons or entities with whom they are negotiating for employment have a financial interest;
3. limitations on activities of former officials in representing private or personal interests before their former government department, such as prohibiting the involvement of such officials in cases for which they were personally responsible;
4. limitations on former officials representing private interests by their improper use of influence upon their former government department;
5. limitations on former officials using confidential knowledge or information gained during their previous employment as an official in the public sector;
6. prohibition and limitations on the receipt of gifts or other advantages;
7. prohibitions on improper personal use of government property and resources.

**4. Establish criminal laws and sanctions effectively prohibiting bribery, misuse of public property, and other improper uses of public office for private gain.**

Effective measures for this objective include:

1. laws criminalising the giving, offering or promising by any party ('active') and the receipt or solicitation by any official ('passive') of a bribe, and criminalising the giving or receiving of an improper gratuity or improper gift;
2. laws criminalising the illegal use by officials of government information;
3. laws affirming that all public officials have a duty to provide honest services to the public and criminalising breaches of that duty;
4. laws criminalising improper use of official power or position, either to the detriment of the government or for personal enrichment.

**5. Adopt laws, management practices and auditing procedures that make corruption more visible and thereby promote the detection and reporting of corrupt activity.**

Effective measures for this objective include:

1. systems to promote transparency, such as through disclosing the financial circumstances of public officials – politicians as well as civil servants;
2. measures to ensure that officials report acts of corruption, and to protect the safety, livelihood and professional situation of those who do, including protection of their identities to the extent possible under the law;
3. measures that protect private citizens who, in good faith, report acts of official corruption;

4. Government revenue collection systems that deter corruption, in particular by denying tax deductibility for bribes or other expenses linked to corruption offences;
  5. establishment of independent bodies responsible for preventing, detecting, and eradicating corruption, and for punishing or disciplining corrupt officials.
  6. appropriate auditing procedures applicable to the public sector;
  7. appropriately transparent procedures for public procurement that promote fair competition and deter corrupt activity;
  8. Systems for conducting regular threat assessments on corrupt activity.
- 6. Provide criminal investigators and prosecutors sufficient and appropriate powers and resources to effectively uncover and prosecute corruption crimes.**
- Effective measures for this objective include:
1. empowering courts or other competent authorities to order bank, financial or commercial records be made available or be seized, and that bank secrecy not prevent such availability or seizure;
  2. authorising use under responsible legal supervision of wiretaps or other interception of electronic communication, or recording devices, in investigation of corruption offences;
  3. authorising, where appropriate, the admissibility of electronic or other recorded evidence in criminal proceedings relating to corruption offences;
  4. employing, where appropriate, systems whereby persons charged with corruption or other corruption-related criminal offences may secure more advantageous treatment in recognition of assisting in the disclosure and prosecution of corruption offences;
  5. the development of appropriate information-gathering mechanisms to prevent, detect and deter official corruption and dishonesty.
- 7. Ensure that investigators, prosecutors and judicial personnel are sufficiently impartial to fairly and effectively enforce laws against corruption.**
- Effective measures for this objective include:
1. personnel systems to attract and retain high-quality corruption investigators;
  2. systems to promote the specialisation and professionalising of persons in charge of fighting corruption;
  3. establishment of an independent mechanism within judicial and security agencies with the duty of investigating corruption allegations, and with the power to compel statements and obtain documents from all public officials;
  4. codes of conduct or other measures that require corruption investigators, prosecutors and judges to recuse themselves from any case in which their political, financial, or personal interests might reasonably raise questions about their ability to be impartial;
  5. systems that allow for the appointment of special authorities or commissions to handle or oversee corruption investigations and prosecutions;

6. standards governing the initiation of corruption investigations to ensure that public officials are not targeted for investigation for political reasons.

**8. Ensure that civil and criminal law provides for sanctions and remedies that are sufficient to effectively and appropriately deter corrupt activity.**

Effective measures for this objective include:

1. laws providing substantial criminal penalties for the laundering of the proceeds of public corruption violations;
2. laws providing for substantial incarceration and appropriate forfeiture of assets as a potential penalty for serious corruption offences;
3. provisions to support and protect ‘whistle blowers’ and aggrieved private persons.

**9. Ensure that the general public and the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions that are necessary in a democratic society.**

Effective measures for this objective include:

1. establishing public reporting requirements for justice and security agencies that include disclosure about efforts to promote integrity and combat corruption;
2. enacting laws or other measures providing a meaningful public right of access to information about corrupt activity and corruption control activities.

**10. Develop to the widest extent possible international co-operation in all areas of the fight against corruption.**

Effective measures for this objective include:

1. systems for swift and effective extradition so that corrupt public officials can face judicial process;
2. systems to enhance international assistance to governments seeking to investigate and prosecute corruption violations;
3. systems to facilitate and accelerate international seizure and repatriation of forfeitable assets associated with corruption violations;
4. inclusion of provisions on combating corruption in appropriate bilateral and multilateral instruments.

**11. Promote, encourage and support continued research and public discussion in all aspects of the issue of upholding integrity and preventing corruption among public officials whose responsibilities relate to upholding the rule of law.**

Effective measures for this objective include:

1. appointment of independent commissions or other bodies to study and report on the effectiveness of efforts to combat corruption in particular agencies involved in justice and security matters;
2. supporting the efforts of multilateral and non-governmental organisations to promote public integrity and prevent corruption;

3. promoting efforts to educate the public about the dangers of corruption and the importance of general public involvement in government efforts to control corrupt activity.

## **12. Encouraging of regional and other multilateral organisations in anti-corruption efforts.**

Effective measures for this objective include:

1. becoming parties, as appropriate, to applicable multilateral legal instruments containing provisions to address corruption;
2. co-operating in carrying out programmes of systematic follow-up to monitor and promote the full implementation of appropriate measures to combat corruption, through mutual assessment by governments of their legal and practical measures to combat corruption, as established by pertinent international agreements;
3. participating actively in future international conferences on promoting integrity and combating corruption among justice and security officials.

## **Evaluation**

A set of better strategies and guidelines preventing and controlling corruption could hardly be proposed. These guidelines stress the fact that only persons with the highest levels of competence and integrity should be considered for appointment as public officials and that public administration measures must be devised for upholding the integrity of such officials. This calls for not only proper codes of conduct but specialised institutions for disciplinary action to be taken in cases of breaches of the codes. Codes of conduct without the power of sanction are not worth the paper they are printed on.

The establishment of criminal law that includes more than just laws on bribery, such as the criminal law system of South Africa, is an essential. Transparency to make corruption more visible in order to inform the public – especially the taxpayers – is a basic principle of democratic government. Appropriate powers for impartial and objective corruption investigators are an imperative. The creation of proper institutions with authority to remedy the results of corruption and to penalise offenders is another necessary strategy.

## **SUMMARY**

It is not South Africa only that suffers under the burden of public corruption. The whole world is beleaguered with bad politicians and bad public officials. The whole world seems to have declared war on public corruption. The battle against corruption is on. On the religious level Leonard Swidler is the driving force behind formulating a Universal Declaration of a Global Ethic. Concerned with the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality, and jeopardise social, economic and political development, the General Assembly of the United Nations adopted an International Code of Conduct for Public Officials in 1996. This model code of

conduct of the United Nations covers almost all examples of public corruption, although it is open to some criticism.

Swidler's proposal for a Universal Declaration of a Global Ethic is based on the presupposition of affirmation of human rights, respect for the earth and support for not only human rights but also corresponding responsibilities. The fact that he includes human responsibilities (obligations) distinguishes his proposed Code from all bills of human rights, in particular that of South Africa, that concentrate only on so-called civil rights but not on civil obligations. One cannot enjoy civil rights without also having concomitant civil obligations. Swidler's initiative is the first worldwide effort to bring all the nations of the world to their senses. He effectively shows that in spite of the world's religious beliefs and cultural diversification, a common core of religious and social values has existed since time immemorial, supporting the Golden Rule.

The Global Forum on Fighting Corruption published a document with a list of guiding principles as anti-corruption strategies. The aim of these guiding principles is to promote public trust in the integrity of public officials by preventing, detecting and prosecuting official corruption and unlawful, dishonest and unethical behaviour. A set of better strategies and guidelines preventing and controlling corruption could hardly be proposed. These guidelines stress the fact that only persons with the highest levels of competence and integrity should be appointed as public officials and that public administration measures must be devised to uphold the integrity of such officials.

**Possible examination questions:**

1. Discuss and evaluate the United Nation's International Code of Conduct for Public Officials. (45 minutes)
2. Explain why you think there is a need for a global ethic. (30 minutes)
3. Discuss and explain Leonard Swidler's requirements, basic principles and middle principles for a Universal Declaration of Global Ethic. (50 minutes)
4. What anti-corruption strategies would you suggest?

## CHAPTER NINE

# COMBATING CORRUPTION

### Study goal

The purpose of studying this chapter is to understand the need for combating and controlling corruption as well as the roles of some of the various public institutions created for this purpose. Students must understand the functioning of these institutions.

### Learning objectives

After studying this chapter the student must be able to explain in his/her own words the following:

- The role of the Constitutional Court in protecting the public against unconstitutional acts of government;
- The role of the other courts of law in combating public corruption;
- The role of the Auditor-General in exposing public corruption;
- The role of the Public Protector in protecting the individual against administrative corruption;
- The role of the Human Rights Commission in protecting the individual's human rights;
- The role of the Independent Electoral Commission for securing free and fair elections by preventing election fraud;
- The role of the Special Investigating Unit in recovering financial losses for the state as a result of public corruption;
- The role of ad hoc commissions of inquiry for combating public corruption.

### INTRODUCTION

Corruption erodes the moral fabric of every society, violates the social and economic rights of the poor and the vulnerable, and undermines democracy. It subverts the rule of law, which is the basis of every civilised society. Corruption retards development and denies societies, and particularly the poor, the benefits of free and open competition.<sup>115</sup>

*Fighting corruption is the business of everyone throughout every society.*

### **The Lima Declaration against Corruption**

Unless effective remedies to fight and eradicate corruption are of such a nature as to encompass it in all its forms, the undertaking may well be inadequate. The methods to

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115 International Anti-Corruption Conference, *The Lima Declaration Against Corruption*, Lima, Peru, pp. 7-11. September 1997.



combat and control criminal corruption usually follow the familiar pattern: detection, investigation, prosecution and punishment of the offender. The battle against corruption in its wider connotation involves a whole frame of mind, a change in outlook and values and ethical standards. Vigilance, transparency, publicity and proper institutional bodies are all valuable and necessary tools, but something deeper should also be looked for. A way has to be found which would expose the ugly and pernicious side of corruption and its harmful effects upon society in general and individual lives in particular. Sound ethical standards should be reflected in all aspects of public administration and management. The emphasis must be placed on transparency, incentives, personal responsibility and public accountability.

*Corruption should not be controlled. It should be combated.*

**Peter Wronsley**

Corruption can be fought by negative punitive measures as well as by positive measures. The creation of a culture opposed to corruption through a good moral and civic education is no doubt the best approach in the fight against crime and corruption in particular. It is important for any government to instil in its citizens high moral values and ethical standards. These make them reject crime as evil and as something that should be abhorred. People trained in good moral values and ethical standards have resistance to evil.

The main problem with all forms of corruption is that they thrive on secrecy, confidentiality and silence. This represents one of the most significant aspects of unknown crime or unreported crime. Official statistics, whether criminal or otherwise, seldom reflect this type of activity. One can sense it, but not necessarily prove it. Transparency therefore becomes a key concept in the fight against corruption in the public sector.

It is frequently argued that underdevelopment and poverty are one of the main reasons for crime and corruption. People supporting this view argue that social upliftment is the cure. Another argument is that the deterioration of religious belief is the cause of moral decay and of unethical conduct. The proponents of religious education argue that the world must return to religion for moral upliftment. These are all sublime arguments and of course will help to create moral human beings with integrity and abiding by high ethical standards. However, the fact remains that people are fallible creatures and subject to everyday temptations for committing crime and corruption.

*I can resist everything except temptation.*

**Sacha Guitry (Vice and Virtue)**

No social upliftment, no religious education, no ethical codes of conduct and no laws will ever stop some people from being corrupt. Society will always contain a certain

percentage of people who have no conscience – people without that little voice inside them telling them when they are doing wrong. The deterrent effect of criminal penalties for corruption cannot be ignored. Consequently punishment for corruption should be exemplary. The confiscation of the fruits of corruption will help teach that this kind of crime does not pay. For these reasons government must invent and establish institutions for controlling corruption in the public sector.

For most of human history societies did not make any theoretical distinction between law making and law enforcement; nor did they establish governmental institutions clearly specialising in one kind of operation over the other. Kings as well as their ministers and royal courts made and enforce laws. In the late Middle Ages, however, the idea that justice is best served by having one kind of institution – which came to be called “the executive” – specialised in watching over the behaviour of the king’s subjects and prosecuting those whom they believed had violated the law. Also the idea of having a kind of institution specialising in trying the people thus accused began to take hold. The latter institutions retained the ancient title of “courts”. By the eighteenth century these “courts” were clearly distinguished in both theory and organisation from “the executive”. The courts have largely taken over the functions of determining facts and interpreting and applying law.<sup>116</sup>

Every modern court system provides for appeal against the decisions of some courts to others. In every country the courts are arranged in a hierarchy of appeal, structured in pyramidal fashion from bottom to top. Such a structure is an obvious necessity for any court system, for if it were possible for the loser in any case to appeal against the decision to any court in a circular manner, the process of appeal could then go on indefinitely.

In unitary systems all courts are national in the sense that national authorities appoint their judges and magistrates. The South African Constitution provides for the establishment of independent public institutions that can fight and control corruption. These institutions are:

- the Constitutional Court;
- the Courts of Law;
- the Public Protector;
- the Auditor-General;
- the Human Rights Commission;
- the Commission for the Promotion and Protection of Rights of Cultural, Religious and Linguistic Communities;
- the Commission for Gender Equality;
- the Electoral Commission; and
- the Special Investigating Unit

These are permanent institutions for controlling corruption in the public sector. Seven of these institutions will be discussed and evaluated as examples of institutions combating corruption.

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116 Ranney, *op cit.*, pp. 446-7

There are also other ad hoc institutions and in-house units that may be and indeed were instituted to combat corruption, such as

- the Commission of Inquiry into Public Service Irregularities (White Commission);
- the Unit for Corruption in the Department of Home Affairs;
- the Unit for Corruption in the Police Service;
- the Independent Complaints Directorate in the Police Service for public complaints against police officers;

and many other ad hoc commissions of inquiry appointed from time to time.

The judicial system of South Africa consists of

- the Constitutional Court;
- the Supreme Court of Appeal;
- the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;
- Magistrate courts.

Yet another important instrument in combating corruption is the news media. The news media through investigative journalism can and do play an important role in exposing public corruption. They indeed provide a front-line investigating service to bring allegations of possible corruption to the attention of the government institutions dealing with corruption. The roles of these institutions will now be discussed.

## THE CONSTITUTIONAL COURT

Until the introduction of the new South African Constitution, courts examining civil rights issues in respect of state legislation focused on procedures rather than substantive merits. They were left to concentrate only on whether the prescribed procedures were correctly followed. The courts were actually forbidden by the former Constitution of 1983 “to inquire into or pronounce upon the validity of an Act of Parliament.”<sup>117</sup> Parliament was sovereign and not the courts. Of course, this was done to protect the immoral apartheid laws of the former apartheid regime. This approach was justified with the dubious argument that Parliament could not allow the courts to govern the country.

*The law is a sort of hocus-pocus science, that smiles in your face while it picks your pocket, and the glorious uncertainty of it is of more use to the professions than the justice of it.*

**Charles Macklin**

However, the role of the courts changed radically with the introduction of the interim Constitution of 1994, since then substituted by the new Constitution of 1996 and its

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117 RSA, *Republic of South Africa Constitution*, No. 110 of 1983, Section 34(3).

Bill of Rights that is now the Supreme Law of the country. Government is now subject to the judgements of the courts. It is now against the Constitution and Bill of Rights that legislation enacted by Parliament or other lower-tier legislative bodies will not be tested by the courts when its constitutionality is at issue.

The institution of the Constitutional Court in February 1995 was an important milestone symbolising the introduction of a constitutional democracy and the end of parliamentary sovereignty. In terms of section 167 of the new Constitution, the Constitutional Court is the highest court in all constitutional matters. It may decide only on constitutional matters and issues connected with decisions on constitutional matters. The Constitutional Court's decision on whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter is final.

Although the Supreme Court of Appeal, a High Court or "a court of similar status" may make an order of constitutional validity of an act or any other legislation, the Constitutional Court makes the final decision on whether an Act of Parliament, a provincial Act or conduct of the government is constitutional. The Constitutional Court must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or "a court of similar status", before that order has any force. Any person or institution is allowed, when it is in the interest of justice, to bring a matter directly to the Constitutional Court or to appeal directly to the Constitutional Court from any other court.<sup>118</sup>

At last the people of South Africa have a system that can protect them from politically corrupt legislation that impinges upon their civil rights. Politicians can no longer promulgate politically corrupt legislation. Politicians and Parliament are no longer above the law. They now must abide by the Constitution and the Bill of Rights in their governing of the country.

Judgements handed down by the Constitutional Court have included the abolition of the death penalty – a rather controversial matter – and juvenile judicial corporal punishment as sentencing options, the outlawing of civil imprisonment for debt, and the recognition of the right of access to police dockets and to consult state witnesses. These were all formerly denied human rights. Many of the Court's decisions related to fair trial rights, issues relating to equality, privacy, freedom of expression, provincial powers and the application of the Bill of Rights were also litigated.

Jeremy Sarkin<sup>119</sup> claimed in SA Law Online, that the Constitutional Court has so far performed with a degree of elegance. It has intellectual talent and has shown itself to be a libertarian court and one that is quite at ease with the job of striking down statutes. The individual judges have demonstrated an unqualified commitment to upholding the letter, the values and spirit of the Constitution.

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118 Ibid., Section 167.

119 Associate Professor of Law at the University of the Western Cape and National Executive Member of the Human Rights Commission of South Africa.

## OTHER COURTS OF LAW

*The law is the last result of human wisdom acting upon human experience for the benefit of the public.*

**Samuel Johnson**

Law is one of the great achievements of human civilisation. People's chances of living together happily and fruitfully in society depend largely upon their ability to live according to law. "A government of laws and not of men" surely expresses a deep desire in most of us that our lives and fortunes be governed, not by the passing whims of a dictator, a ruling class, or even a popular majority, but by fundamental and changeless rigid principles of right and reason.<sup>120</sup>

Every law is a general rule made by a government either commanding or prohibiting a certain kind of human behaviour. Every government from time immemorial has established certain official institutions to enforce the law, to detect instances in which natural and legal persons have violated these general rules and to punish the violators.

*There are only two kinds of people: the dead and the waiting. Transposed to the topic of corruption one can say that there are only two kinds of politicians and officials – the honest, who cannot be bought at any price and who carry out their duties without fear or favour, and the dishonest with thresholds of temptation varying according to what the market will stand. If the laws of God have not eliminated this Great Divide you may rest assured that the laws of governments are unlikely to fare any better.*

**Peter Wronsley**

South Africa has committed itself to a system of courts to enforce the laws of the country and to punish the violators of such laws. The courts' function is to detect criminal corruption in the public sector and to punish the perpetrators of such corruption. There exists a hierarchy of courts to function as protectors of the public against criminal corruption in the public sector. All courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation.<sup>121</sup>

*Quis custodiet ipsos custodes? (Who shall guard the guards?)*

**Juvenal (Satires, vi. 347)**

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<sup>120</sup> Ranney, *op cit.*, p. 441.

<sup>121</sup> See the *Criminal Procedure Act*, No. 51 of 1977, as amended, for more detail.

### **Magistrates' Courts**

Magistrates' courts may decide on any matter determined by an Act of Parliament or on any common law offences. This would include any acts of criminal corruption in the public sector, such as bribery, extortion, kickbacks, fraud, falsification, forgery, embezzlement, graft and ghosting. However, section 170 of the Constitution prohibits magistrates' courts to enquire into or rule on the constitutionality of any legislation or any conduct of the President. They are, however, the first-line institutions for controlling criminal corruption.

### **High courts**

High Courts are the second line of institutions controlling criminal corruption. They are the first-line institutions on controlling political corruption in the form of unconstitutional actions by the government. A High Court may decide any constitutional matter except a matter that only the Constitutional Court may decide, or is assigned by an Act of Parliament to another court of a status similar to a High Court, and any other matter not assigned to another court by an Act of Parliament.

### **Supreme Courts**

The Supreme Courts of South Africa consist of nine divisions of High Courts situated in Cape Town, Grahamstown, Kimberley, Pietermaritzburg, Bloemfontein, Pretoria, Durban, Johannesburg, and Port Elizabeth, each with its own demarcated geographical area of jurisdiction, and an Appellate Division situated in Bloemfontein.

### **Supreme Court of Appeal**

The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters, and may decide only on appeals, issues connected with appeals and any other matter that may be referred to it in circumstances defined by an Act of Parliament.

*There are many judges behind the plough and many ploughmen on the bench.  
From there the crooked furrows and crooked judgements.*

**C. J. Langenhoven (1873-1932)**

### **Power of courts in Constitutional matters**

The Constitution prescribes the powers of courts in constitutional matters. When deciding upon a constitutional matter within its power, a court must declare that any law or government conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency. In a case of inconsistency the court may make any order that is just and equitable, including an order limiting the retrospective effect of the declaration of invalidity. The court may also issue an order suspending the declaration of invalidity for any period and on any conditions to allow government to correct the defect in its legislation or conduct. A court which makes an order of constitutional invalidity may grant a temporary interdict or other relief to a party, pending a decision of the Constitutional Court on the validity of an act or other government conduct.

It is of importance to note here that an order of constitutional invalidity by the Supreme Court of Appeal or a High Court has no force until the Constitutional Court has confirmed it. Thus the highest power on deciding constitutional validity lies with the Constitutional Court. The Constitutional Court's decision is final and there is no appeal to any other court from there.

### **Judicial neutrality**

What is of the utmost importance here is the neutrality, objectivity and integrity of the courts. In countries with corrupt political systems, ruled by corrupt political parties and corrupt heads of state, with a corrupt justice system and corrupt security forces, the rule of law and democracy withers away.

According to the traditional conception, judges "declare" law that others have made, they do not make it themselves. The task of judges is to find out what the law is. This demands a high order of legal skill and training and a "judicial temperament". Therefore the courts should be organised in such a way as to ensure that the task of adjudication is performed most effectively and correctly, and that the judiciary can consider each case strictly on its legal merits without being influenced by political considerations. The judiciary should be made quite independent of both the legislature and the executive authorities. It should be insulated from the noisy and selfish solicitations of political parties and pressure groups. Judges should be selected for their legal skills and judicial temperaments rather than for their political preferences. Judges should remain completely aloof from politics, and politics must not be permitted to besmirch their deliberations and decisions.

Strictly speaking, professional judges should not belong to any political party or show any bias towards any political party or its policies, or belong to any secret organisation of whatever kind. There is serious doubt whether this rule was always applied in the appointment of magistrates and judges in the past – or in the present. There is no proof of nepotism, but one can sense something wrong when carefully considering the history of past and recently appointed judges. In terms of the so-called policy of "transformation" by affirmative action, it seems that in some cases preference is being given to sympathisers with the ruling party when it comes to appointing prosecutors, magistrates and judges. Applying political nepotism in the appointment of prosecutors, magistrates and judges is in itself a deed of corruption, jeopardising the legitimacy of our courts.

### **THE PUBLIC PROTECTOR**

*The use of the welfare state in the modern world has resulted in a rapid and bewildering growth of bureaucracies that has made necessary new protections against bungling and abuses of power.*

**Donald C. Rowat**

Despite the imposing array of institutions enforcing public administration responsibility, concern is still intensifying for public administration to become more responsive to the public's needs and less corrupt. Once a statutory sanction or penalty has been created in relation to deviating conduct, we are dealing with criminal law. There is, however, a broad area of conduct that is unacceptable in the eyes of the community, but against which no punitive sanction can be imposed. The question is whether the office of the Public Protector can play a role in combating unethical behaviour or in advancing ethical conduct in the public sector.

The office of the Public Protector was created by the interim Constitution of 1994 that laid down the process of establishment and appointment, the imperative of independence and impartiality, powers and functions, staff and expenditure and provided for provincial public protectors.

*Nothing is more gratifying to government than to become a protector.*  
**John C. Calhoun (speech, 21 March 1834)**

The Public Protector, appointed by the President, is independent and subject only to the Constitution and the law. He must be impartial and must exercise his powers and perform his functions without fear, favour or prejudice. Other organs of state must assist and protect the Public Protector to ensure the independence, impartiality, dignity and effectiveness of the Public Protector. No person or organ of state may interfere with the functioning of the Public Protector. The Public Protector is directly accountable to the National Assembly and must report on his activities and performance of his functions to the Assembly at least once a year.<sup>122</sup>

In addition to the powers and functions assigned to the Public Protector by the Constitution, he shall be competent to investigate, on his own initiative or on receipt of a complaint, any alleged

- maladministration in connection with the affairs of any government institution;
- abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a public official performing a function connected with his employment;
- improper or unlawful enrichment or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission with the affairs of the government institution contemplated;
- act or omission by a public official, which results in unlawful or improper prejudice to any other person.<sup>123</sup>

The Public Protector has to "...investigate matters and to protect the public against matters such as –

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122 RSA, *Republic of South Africa Constitution*, Act No. 108 of 1996, Section 181.

123 RSA, *Public Protector Act*, Act No. 23 of 1994, Section 6(4)



- maladministration in connection with the affairs of government,
- improper conduct by a person performing a public function,
- improper acts with respect to public money,
- improper or unlawful enrichment of a person performing a public function, and
- an act or omission by a person performing a public function resulting in improper prejudice to another person.”<sup>124</sup>

His powers of investigation cover all levels of government – from the national to the local. He must be accessible to all persons and communities. The reports of the Public Protector must be open to the public, unless exceptional circumstances require that a report to be kept confidential.

The powers vested in the Public Protector cover all forms of public corruption. In summary, the functions of the Public Protector are, firstly, to investigate any conduct in state affairs, or in the public administration in any sphere; secondly, to report on the conduct; and, finally, to take appropriate remedial action. The Public Protector is concerned not only with ensuring the honesty of those working for the government, but also with ensuring that they treat members of the public with respect.

The power of the Public Protector is made clear by the right of search, seizure and subpoena conferred on him. The only limitation placed on his powers is that he is not allowed to investigate court decisions.

The Public Protector shall submit to Parliament half-yearly reports on the findings in respect of investigations of serious nature, provided that the Public Protector shall at any time report to Parliament on the findings of any particular investigation if

- he deems it necessary;
- he deems it in the public interest;
- it requires the urgent attention of or intervention by Parliament;
- he is requested to do so by the Speaker of the National Assembly or by the President.

The findings shall also be made available to the complainant and to any person implicated thereby.<sup>125</sup>

*All governments should operate in a transparent and accountable manner at all levels, with the public having access to information to the maximum extent possible.*

#### **The Lima Declaration against Corruption**

### **Evaluation**

A matter for concern is the power of the Public Protector to “direct any category of persons or all persons whose presence is not desirable, not to be present at the proceedings during the investigation or any part thereof”. Also that “no person shall

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<sup>124</sup> Ibid., Preamble of the Act.

<sup>125</sup> Ibid., Section 8.

disclose to any other person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given before the Public Protector, unless the Public Protector determines otherwise.”<sup>126</sup> This opens the door for corruption. These provisions could also be abused to exclude reporters from the press and other news media. Another point of concern is that the Public Protector may under “exceptional circumstances” require that his reports be kept confidential. This is against the democratic principle of “transparency” and, as we have already argued, the lack of transparency creates a breeding ground for corruption. The Office of the Public Protector must be above such potentially suspicious possibilities, because this could only harm its public image and legitimacy. The Public Protector is the “protector” of the public and must act in such a manner that he always has the respect and support of the public. That is the reason why he must be a well-qualified and experienced lawyer, as people normally trust judges more than politicians.

According to the press the Public Protector, Adv. Selby Baqwa, is complaining that the government is intruding upon his independence, because he has to negotiate with the Department of Justice on his budget appropriation and not directly with Parliament. According to Baqwa, this means that the budget needs of his office must compete for prioritisation with the needs of the Department. This process gives the Cabinet direct control over the office of the Public Protector, which may have a devastating effect on the independence and legitimacy of his office.

One of the pillars of independence is financial independence. “If the money from my office comes from an institution of whom I am the overseer, then my independence is compromised, in the same manner as that of the Independent Complaints Directorate, which is part of the department of Safety and Security. If we talk about independence then it must be genuine and not a pretension on paper.”<sup>127</sup>

Another concern is the portfolio committee’s recommendation that the Act be amended to allow the Minister of Justice to appoint the Deputy Public Protector. This will create the perception of a political appointment. “My deputy shall have the same powers as I do and if he is appointed by the Cabinet, it would theoretically mean that the government of the day may have an enormous influence on the activities of my office.”<sup>128</sup>

## **THE AUDITOR-GENERAL**

Timely and regular external auditing of the financial statements and records of public institutions is an imperative for the fight against corruption. As an *ex post facto* action, auditing in no way absolves the so-called ‘accounting officers’ of audits of their day-to-day managerial responsibilities, and they can never detect each and every defalcation or unrecorded bribe. But coupled with good management by the public officials, the certainty that an expert outside eye will at regular intervals be systematically checking the records and reporting findings constitutes a powerful deterrent to those contemplating corruption involving creative bookkeeping.

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126 Ibid., Section 7.

127 Internet, <http://livenews.24>.

128 Ibid.

In terms of the Constitution the President appoints the Auditor-General. His functions and duties are prescribed and controlled by the Constitution, the Auditor-General Act and the Audit Arrangements Act. According to section 188 of the Constitution, the Auditor-General must audit and report on the accounts, financial statements and financial management of

- all national and provincial government departments;
- all municipalities; and
- any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

In addition, the Auditor-General may audit and report on the accounts, financial statements and financial management of

- any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
- any institution that is authorised in terms of any law to receive money for a public purpose.<sup>129</sup>

The Auditor-General Act and the Audit Arrangements Act both prescribe additional powers and functions of the Auditor-General.

The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit and to any other authority prescribed by national legislation. The most important stipulation is that all the reports must be made public. This is democratic transparency at its best. What is also important is the independence of the Auditor-General. No person (President or minister) may interfere with the functioning of the office of the Auditor-General. The Auditor-General is accountable only to the National Assembly, and must report on his auditing activities and functions direct to the National Assembly at least once a year.

It is of the utmost importance that the Auditor-General acts independently from the Executive Authority at all government levels, or any other commissioning body in the public sector. Otherwise it would simply mean that he is functioning as some kind of internal auditor, which naturally lowers his status and diminishes the reputation of constitutional independence drastically. It would also subject him to unlawful influence.

To enable the Auditor-General to monitor and, if necessary, criticise the financial activities of government institutions impartially and with undaunted courage, it is of cardinal importance that he must not only be able to act independently, but that he must be seen as an independent agent of the public. He must never be seen as an agent of the government. It is essential that he be in a position to report objectively and without any fear for his position on any shortcomings in the financial administration of any government institution by way of a public document and evidence.

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129 RSA, *Republic of South Africa Constitution Act*, Act No. 108 of 1996, section 188.

### **Types of government auditing<sup>130</sup>**

The types of government auditing cover a wide spectrum. On the one side is the traditional public auditing or so-called regularity auditing, which, among other things, pertains to the submission of documentary evidence and compliance with prescriptions. On the other side, there is the evaluation of the efficiency and effectiveness of government activities, also known as performance auditing. Together both types of auditing are known as comprehensive auditing.

#### ***Regularity auditing***

This type of auditing is subdivided into two facets, both of which should receive attention in the course of auditing:

*Financial auditing:* This concept may be defined as an independent, external evaluation of financial transactions, including the accounting systems involved. The purpose is to form an objective opinion on whether income, expenditure, assets and liabilities have been properly corroborated and recorded. The purpose is also to ascertain whether all financial statements fairly represent and reflect the financial position and results of the year's activities.

*Compliance auditing:* This is an independent, external evaluation to determine to what extent laws, regulations, policy, control measures, procedures, prescriptions and authorisations have been complied with. The purpose of this kind of auditing is to form an opinion as to whether government activities have occurred according to law, i.e. whether they were *intra vires*.

#### ***Performance auditing***

Although there are various other names to describe this concept of auditing, such as management auditing, operational auditing, effectiveness auditing, efficiency auditing and value-for-money auditing, the term 'performance auditing' was accepted in 1986 by the Twelfth International Congress of Supreme Audit Institutions. The purpose of this audit is to determine the extent to which value for money spent has been achieved, as well as to identify opportunities that may lead to greater value for money spent.

Different bodies may reach different conclusions when discussing the value-for-money concept. In general, however, consensus has been reached that where the term 'value-for-money' is applied in regards to performance auditing, it pertains to three related aspects of the audited institution's achievements, namely economy, efficiency and effectiveness with which it has carried out its responsibilities:

- Economy refers to the conditions and accompanying acquisition of resources (both human and physical) of the right quality, in the right quantities, at the right time and at the lowest possible cost.
- Efficiency refers to the best utilisation of resources or the relation between input and output. In this respect there are three possibilities, namely –

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130 For a more detailed discussion on the types of public auditing see Gildenhuys J. S. H., 1997, *Public Financial Management*, pp. 498-505.

- maximising output with given input;
  - minimising input for given output; and
  - optimising the input-output ratio at any level.
- Effectiveness in the application of resources in turn refers to how well the institution's objectives and annual targets have been realised.

Performance auditing may thus be defined as an independent, objective and neutral review of the financial and operational achievements of a government department, provincial government, local government or parastatal. Performance auditing is carried out by the Auditor-General to determine whether the control measures instituted ensure that allotted resources are used economically, efficiently and effectively. If necessary, matters must be reported to the legislature or commissioning authority concerned.

### **Duties and responsibilities of the Auditor-General summarised**

The Auditor-general, his staff and agents must audit all the accounts of all accounting officers of government departments, provincial governments, local governments and statutory bodies (parastatals) as well as all other persons in the service of such departments and institutions to whom the receipt, safeguarding, payment or issuing of public money, stamps, securities, stores and equipment have been entrusted.

He must satisfy himself that all reasonable precautionary measures have been taken to ensure that all income, expenditure, assets and other interests have been safeguarded, that the relevant laws and regulations have been complied with, and that proper documentary evidence has been submitted in all respects. If this is not the case, he must report accordingly so that corrective actions can be taken.

As soon as possible after the close of each financial year, the Auditor-General must report on the accounts and financial statements directly to the National Assembly, or the relevant provincial legislature or relevant local government council, or other commissioning institution concerned. In his report he must draw the attention to

- every case where, in his opinion, a grant or budget vote has been exceeded or used for a service or purpose other than for which it was intended;
- the utilisation of money for a service which, in his opinion, is or was uneconomical, inefficient and ineffective or not conducive to the best interest of the state, province, municipality, or parastatal concerned;
- the use or custody of property, money, stamps, securities, equipment, stores, trust money, trust property or other assets in a manner which is or may be to the detriment of the state, province, municipality or parastatal concerned;
- all unauthorised expenditure which in the course of the execution of his powers, or the performance of his duties comes to his attention; and
- any other matter that, in his opinion, should in the public interest be brought to the notice of the National Assembly, provincial legislature, municipality or parastatal, as the circumstances may require.

### **Evaluation**

From the above explanation it must be clear that the Auditor-General is in a good position to fight public corruption. Skilled auditors should be able, through their

financial auditing, to pick up corrupt actions such as falsification, forgery, embezzlement, graft, ghosting, illegal diversion of public resources, unauthorised overspending of budget votes and unauthorised transfers between budget votes. The Auditor-General's office should immediately report criminal corruption cases to the Public Prosecutor for investigation and prosecution. Through his compliance audits the Auditor-General must be able to pick up many forms of administrative corruption, such as not complying with laws, regulations, policies and prescribed procedures. All these irregularities must be reported to the relevant authorities for the necessary corrective steps and eventually reported to parliament. Parliament should then call upon the President, or the relevant accountable minister, to explain and to correct the misdemeanours.

Through his performance auditing the Auditor-General should be able to assess the quality of public administration. He can determine the efficiency and effectiveness of every government department. Performance auditing will determine the quality of public managers. Better public managers should then replace those who are unsuccessful.

The problem with external auditing by the Auditor-General is that corruption is being discovered long after it has been committed. However, this does not exclude it as an effective control measure. The possibility of being caught out by the Auditor-General always hangs like a sword over the head of every public official. In this manner it serves as a deterrent against corruption and maladministration. Procedures and regulations can, on the recommendation of the Auditor-General, be improved to prevent future corruption. The Auditor-General has an important role to play in combating corruption in the public sector, provided his independence is respected and maintained, as provided for in the Constitution. The appointment of an Auditor-General must always be protected against political nepotism. An Auditor-General must be allowed to do his duty without any fear of party political pressure and political retribution or of losing his position.

### **THE HUMAN RIGHTS COMMISSION**

A Human Rights Commission was established in terms of section 181 of the Constitution and the Human Rights Commission Act, No. 54 of 1994. The establishment of the Human Rights Commission is an important institution for promoting and protecting human rights in South Africa. It is an important instrument in controlling political corruption by government and public officials – in the sense of preventing government or public officials from disregarding or negating individual citizen's human rights.

The major function of the Commission is to promote respect for human rights and a culture of human rights through education and raising community awareness, by making recommendations to parliament, by reviewing legislation and, importantly, by investigating alleged violations of fundamental human rights and assisting those affected to secure redress. The commission must also promote the protection,

development and attainment of human rights, and monitor and assess the observance of human rights in the country.<sup>131</sup>

The powers of the Commission are far reaching, including controversial powers of the search and seizure of documents and other evidence. In conducting its investigations, the Commission may enter and search premises and gain access to information relevant to any investigation. It may compel any person to produce any document and to answer questions under oath. The Commission also has the power to take disputes to court.<sup>132</sup>

The investigating powers of the Commission appear almost draconian. The Commission may conduct any investigation to exercise its powers and require from any person such particulars and information necessary for its investigation. Any person shall be compelled to answer all questions put to him or her, notwithstanding that the answer may be incriminating. If a person relies on his or her privilege against self-incrimination, the Commission in consultation with the Public Prosecutor, may issue an order to compel such person to answer. However, any incriminating answer shall not be admissible as evidence against the person concerned in criminal proceedings in a court, with the exception of perjury or certain crimes contemplated in the Criminal Procedures Act of 1955.

One of the most important aspects of the law is the provision that the Human Rights Commission or any member of the Commission, or a member of the staff of the Commission, must be independent and impartial. They shall serve impartially and independently and exercise or perform their powers and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.<sup>133</sup> No public official or any other person may interfere with the functioning of the Commission.

The Commission may make known to any person any finding in respect of a matter investigated. This is a discretionary power, but for the sake of transparency it should rather have been an obligatory power. The Commission is obliged to submit quarterly reports to the President and Parliament on its findings in respect of any of its investigations.

### **Modus operandi**

According to its annual report for 1997-1998, the Commission has worked with government, civil society and individuals, both nationally and abroad, to fulfil its constitutional mandate. The Commission serves as both a watchdog and a visible route through which people can access their rights. While the handling and management of complaints concerning human rights violation lies at the heart of the Commission's work, through its educational, research and legal functions, the Commission endeavours to create a national culture of human rights. The Commission also strives to monitor and develop human rights jurisprudence. The Commission also works closely with similar bodies and institutions throughout Africa and the world.<sup>134</sup>

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131 RSA, *Republic of South Africa Constitution Act*, No. 108 of 1996, section 184.

132 Ibid.

133 RSA, *Human Rights Commission Act*, No. 54 of 1994, section 4.

134 S.A. Human Rights Commission, 1997-1998 *Third Annual Report*, p. 7.

The Commission has established seven standing committees, each convened by a Commissioner. The following committees were established:

- Policy
- Government and Parliamentary Liaison
- Legal and Constitutional Affairs
- NGO and CBO liaison
- Child Rights
- Rights of People with Disabilities.

The Commission established several provincial offices for the Commission and its services are to “be both visible and accessible to all South Africans in all corners of the country.”<sup>135</sup>

The Commission embarked on an extended programme to promote and protect human rights. For the promotion of human rights they embarked on an education and training programme, because for all citizens to enjoy human rights requires more than the codification of noble ideals in the law. “South Africans must know their rights and join together with government, civil society and the private sector in ensuring their realisation.”<sup>136</sup>

While the commission strives to help build a society in which all people and institutions respect and adhere to human rights, legal intervention is often necessary to address human rights violations. The Commission’s Legal Services Department processes complaints and makes every effort to ensure that all complaints of human rights violations are properly investigated.

## **Evaluation**

In the light of its annual reports, there can be no doubt that the Human Rights Commission is doing well. It received many complaints, of which the majority have to do with racism. The Commission has already issued several reports on human rights abuses. The latest report of the Commission deals with racism in public schools. It was found that racism in schools is still of common occurrence, which is a very sad situation.

The most worrying aspect of the Human Rights Commission is the possibility of confidentiality and secrecy. During its investigations the Commission may direct any person or persons “not to be present at the proceedings during the investigation or any part thereof.”<sup>137</sup> If this allows the Commission to exclude the public and the news media from its proceedings, then one of the basic rights of the public, namely to be informed on any government action, is in jeopardy. One of the basic principles of democracy is transparency of the actions of all public institutions. It would be a matter of the protector of human rights denying a human right – in this case the right to be informed.

Another point of concern is the fact that each year the Commission must require government institutions to provide it with information on the measures they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. These are all

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135 Ibid. p. 8.

136 Ibid. p. 11.

137 RSA op cit, section 10.



positive rights based on socialism and demanding government coercion. The Commission must guard against the possibility of becoming an instrument for enforcing the policies and programmes of the ruling party. In such a case it will lose its independence and impartiality and may also lose its public legitimacy. The Commission must always remember that it acts as the protector of individual human rights, even against the government if necessary.

Yet another point of concern about the independence and neutrality of the Commission is the fact that the Department of Justice controls the Commission's budget. Controlling an institution's budget means controlling its programmes.

It is significant to note that the Human Rights Commission apparently turned a blind eye towards the question of the right of citizens to register as voters with identity documents other than bar-coded identity documents. To deny citizens their right to vote because of a technical government requirement is a gross violation of one of their human rights that is entrenched in the Constitution. The Human Rights Commission should on its own initiative scrutinise government legislation in order to identify possible breaches of human rights by the legislature.

*No person on earth is born a racist – it is the bad behaviour of opposite race groups that turn one into a racist.*

**Schoolboy from Soweto**

Allegations are made that the chairperson of the Human Rights Commission appears to be very obsessed with racism. Some time back Dr Barney Pityana publicly attacked a well-known academic lawyer and self-confessed ANC member, Professor Dennis Davis (now a judge of the Cape Supreme Court) as a racist. The attack was made on television for everybody to see and hear. Davis had criticised some legal changes that the ANC had made, feeling these would cause problems. For this criticism Pityana branded him a racist. In reaction Davis accused Pityana of not being competent to serve as chairperson of the Commission and challenged him to resign. Commenting on this unfortunate incidence, Jeremy Sarkin referred to it as a “public slanging match” and wrote: “This is of particular concern, given its [the Commission's] legislated task of promoting and protecting human rights.”<sup>138</sup> Jim Peron commented that “if all the Commissioners of the Human Rights Commission have such loose and irrational definitions of racism, then press freedom [freedom of speech] is again under attack.”<sup>139</sup>

*Racism is South Africa's curse: there is no denying it. I never have. On the contrary, my party and I are searching – like all committed, decent South Africans – for an antidote to this poison of our nation's soul.*

**Tony Leon, Leader of the Democratic Alliance.**

<sup>138</sup> Sarkin, Jeremy, 1997, *SA Law Online*.

<sup>139</sup> Peron, Jim, 1999, *Die, the Beloved Country*, Amagi Books, Saxonwold p. 30.

Recently newspapers were under attack by the Commission. The Mail & Guardian and the Sunday Times were both charged with “racism” in a complaint brought before the Human rights Commission by the Black Lawyers Association and the Association of Black Accountants of South Africa. These are two groups that, if their names are accurately descriptive, practice membership according to race, i.e. they are racists themselves in terms of general nomenclature.<sup>140</sup> These groups complain that reports on crime place blacks in a bad light and therefore violated their rights to “equality” and “dignity.” “The main thrust of the complaint was that too many stories published by the two newspapers focused on corruption by black people, not enough stories published about corruption by white people and not enough stories about black people fighting corruption.”<sup>141</sup>

*Never judge a person by the colour of his skin but by the way in which he behaves.*

**Schoolboy from Soweto**

Peron writes “In this more recent case Pityana made public remarks about ‘you whites’ in defence of himself. Yet, if a white politician were to refer to ‘you blacks’, he would immediately be denounced as racist. It is open to debate whether Mr. Pityana, himself, is guilty of the very ‘crimes’ for which he is investigating the media.”<sup>142</sup>

In its response to the Human Rights Commission’s threat of investigation for racism, the Mail & Guardian noted, “there was a real danger of a drift towards a form of McCarthyism in South Africa, in which the emotive cry of ‘communist’ is replaced with that of ‘racist’. The action by the associations of black lawyers and black accountants reinforces that fear and the antics of the HRC suggests this so-called ‘watchdog’ is – at least under present leadership – no bulwark against such attacks on our liberty.”<sup>143</sup>

What the press really wants to say is that the Human Rights Commission’s chairperson is not really neutral, objective and unbiased. The press creates the perception that he dislikes whites simply because they are white. Some newspapers refer to the Human Rights Commission as Big Brother watching your every step.

In its Interim Report on Racism in the Media (November 1999), the Human Rights Commission came to the conclusion that racism does exist in the news media. There is no reason why one should not accept the findings of the Human Rights Commission in this regard. However, from its report on an investigation into racial stereotyping in the media, one can only conclude that it is the most unscientific, subjective and biased investigation ever encountered. It appears that every statement of fact (a factual truth)

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140 These two groups claim for themselves the natural right of freedom of disassociation, while denying Whites the same right. This is apparently in line with a general assumption that Blacks cannot be racist, but Whites are by definition racist.

141 Peron, Jim, *op cit*.

142 Peron, Jim, *op cit*.

143 Ibid.

regarding Blacks or African states in the news media was interpreted as “subliminal racism” and it accused the news media “...that it functions under the guise of freedom of expression to corrupt the minds of readers, viewers and listeners”.<sup>144</sup> The Commission held that the factual statements in the news media such as: “500 killed in bombing raids in the DRC”; “60 people killed in ambush in Angola”, depersonalises black people who have died and that blacks die in large numbers and this therefore jeopardises the dignity of black people.<sup>145</sup> One cannot help but conclude that the Human Rights Commission is obsessed with and sees racism behind every factual news report related to black people. In doing this, the Commission only drums up emotions against racism, enlarging the divide between Black and White instead of narrowing it. In this way the Commission and South Africa will never attain its objective of reconciliation.

The Commission should rather accept the fact of human racism; the fact that God created several different races with different skin colours and different cultures in the world and that the races in South Africa came together through history. Furthermore, as long as this situation exists, one will always experience some form of racism. This is simply human because of the fallibility of the individual. Exposing cases of racism and putting them under the spotlight will only generate more hatred among races, while the dignity of the individual will never be preserved. Gross violations of human rights should rather be left to the Courts to deal with.

In the case of the Vryburg High School incident, in which a black scholar stabbed a white scholar with a pair of scissors in the neck and was subsequently suspended, the racist implications were blown up out of all proportion. In this case the Commission lost no time in branding the school management as racist. The white scholars and the white members of the school’s managing board were blamed and branded as racists because they suspended the black scholar from school. But eventually the same black scholar was, because of his criminal inclinations, eventually suspended from all schools in the Northern-Western Province by the ANC provincial government. Will the Commission brand this statement of fact also as “racist”?

The Commission should rather concentrate on its major function of promoting respect for human rights and a culture of human rights through education and not by ill-conceived and unnecessary investigations and unfounded accusations.

### **THE INDEPENDENT ELECTORAL COMMISSION**

Elections are very emotional and sensitive matters. It is one area of public activities where corruption can be rife. Special measures should be taken to prevent electoral corruption in any form. The Electoral Commission could be regarded as one of the institutions established to administer elections and therefore also to control electoral corruption. The Constitution provides for the establishment of an Electoral Commission that shall be independent and subject only to the Constitution and the law. Because of this imperative of independence the Commission became known as

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144 Human Rights Commission, *The News in Black and White: An Investigation Into Racial Stereotyping in the Media*, Media Monitoring Project, October 1999, p. 3.

145 Ibid. p. 24.

the “Independent Electoral Commission“ (IEC). The Commission shall be impartial and must exercise its powers and perform its duties without fear, favour or prejudice. No person or government institution shall interfere with the functioning of the Commission. The Commission is accountable to the National Assembly, and must report on its activities once a year to the National Assembly.<sup>146</sup>

### **Powers, duties and functions of the Commission**

- The main function of the Independent Electoral Commission is to manage elections of national, provincial and municipal legislative bodies in accordance with national legislation and to ensure that these elections are free and fair.<sup>147</sup> The Electoral Commission Act No. 51 of 1996 prescribes in detail the powers, duties and functions of the Commission. The functions of the Commission inter alia are that it has to
- manage any election;
- ensure that any elections are free and fair;
- promote conditions conducive to free and fair elections;
- promote knowledge of sound and democratic electoral processes;
- compile and maintain voters’ rolls by means of a system of registering of eligible voters by utilising data available from government sources and information furnished by voters;
- compile and maintain a register of political parties;
- continuously review electoral legislation and propose electoral legislation and to make recommendation to parliament in connection therewith;
- demarcate wards in local government areas;
- declare results of all elections; and
- adjudicate electoral disputes of administrative nature; etc.<sup>148</sup>

### **Appointment of commissioners**

The Commission consists of five members, one of whom shall be a judge of the Supreme Court, appointed by the President. Members must be South African citizens and must not have a high political profile. Members are appointed from a list recommended by a panel consisting of the President of the Constitutional Court, one representative each from the Human rights Commission and the Commission of Gender Equality and the Public Protector. The panel shall act in accordance with the principles of transparency and openness. The panel sends the list of recommended candidates to a committee of the National Assembly, representative of all political parties. This committee recommends the five names for appointment by the President. The President appoints the chairperson of the Commission.

### **Evaluation**

The Electoral Commission is a good example of an institution for securing free, fair and uncorrupted election processes. It creates the impression of independence,

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146 RSA, *Republic of South Africa Constitution*, Act No. 108 of 1996, section 181.

147 Ibid., section 190.

148 For more detail, consult Section 5 of Act 51 of 1996.

neutrality, objectivity, correctness and absolute fairness – an institution that can operate without fear, favour or prejudice. However, the problem with this idealistic system is the open-endedness of the Constitution, stipulating that additional powers for the Commission shall be provided for in national legislation. This makes a mockery of the so-called rigidity of the Constitution, because an ordinary majority may adopt national legislation.

The Bill of Human Rights contained in the Constitution is clear on the right to vote. Section 19(3) of the Constitution stipulates “Every adult citizen has the right to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret.” There is no qualification added to this provision. Widely construed, this means that if one can prove by any means that one is a citizen of this country, either through birth, descent or naturalisation, one has the inalienable right to vote. Therefore, if anyone can produce documentary evidence of his or her citizenship, be it a birth certificate, certificate of naturalisation, old or new identity book, even an old passbook or an old identity document of the former so-called homelands, he or she should be allowed to vote.

Section 6 of the Electoral Act, No. 73 of 1998 provides that “Any South African Citizen in possession of an identity document may apply for registration as a voter.” This stipulation qualifies the Constitution by identifying the document of proof of citizenship that includes a temporary certificate issued by the Department of Home Affairs. The question here is what document is regarded as an “identity document”? Section 16 of the South African Citizenship Act, No. 88 of 1995 provides for the issue of a “Certificate of South African citizenship”. It provides that the Minister of Home Affairs “may on application of any person cause to be issued to that person a certificate in respect of the status of any person who to his or her satisfaction is, or was, a South African citizen”. The certificate of citizenship must indicate, among other things, that the person is or was a South African citizen by birth, descent or naturalisation. The certificate of citizenship contains in a “bar code” all the particulars of the citizen to whom it was issued. The document became known as the “bar-coded identity document” of South African citizenship. The Population Registration Act Repeal Act, No. 114 of 1991, repealed all acts pertaining to population registration and the issue of identity documents. Superficially construed, this means that all former identity documents ceased to be valid proof of South African citizenship and that only “bar-coded” identity documents may be accepted for registration of voters.

However, this conclusion could be unconstitutional. The Bill of Rights provides that “Every citizen has a right to vote” It does not stipulate that only those citizens with “bar-coded” identity documents have the right to vote.

*Quand la populace se mêle de raisonner, tout est perdu. (Once the people begin to reason, all is lost.)*

**Voltaire (letter to Damilaville, 1 April 1766)**

As the quote from Voltaire says, once the people begin to reason all is lost. In the case of the New National Party v. South African Government in the Cape High Court, 1999, Mr Justice Van Zyl rejected the claim that having the bar-coded identity document as the only identity document for registration as a voter is unconstitutional. In a similar court case in the Pretoria High Court the Democratic Party also lost its case. In the Cape High Court Mr Justice van Zyl based his judgement on the principle of reasonableness. He argued: “An important consideration in this regard is, I believe, whether or not the requirement of a bar-coded identity document for voting in the election is reasonable and, if so, whether or not potential voters have been given sufficient time to acquire it.” He concluded: “The answer to the first question does not require much debate: for the reasons set forth above it is clearly reasonable to require a bar-coded identity document for voting in the next, or for that matter in any, election.” He further argued that eligible voters had ample time since 14 October 1998, the date of the promulgation of the new Electoral Act, to acquire such identity documents. Those who did not do so disfranchised themselves. The honourable judge also concluded that there is no evidence that the Department of Home Affairs cannot cope with the demand for and issue of bar-coded identity documents on time.

The honourable judge, after citing several authorities on the subject, stated that “All these authorities indicate and accept, as this court accepts, the fundamental right of every citizen to vote in a free and fair election”. In the light of this statement, the final judgement seems to be a very strange one. The final judgement is based on the side issues of reasonableness and whether the Department of Home Affairs can cope with the demand for bar-coded identity documents, and not on the real issue of unconstitutionality. The Court never discussed the meaning of “citizenship” and whether any other documents are proof of citizenship or not. It seems as though the Court did not consider the fact that the Bill of Rights states that every citizen has the right to vote, neither that the Constitution does not qualify this right by requiring a person to be registered in the population register and be issued with a bar-coded identity document. Are an entry in the population register and a bar-coded identity document the only proof of citizenship? If other documents are proof of citizenship, why then can people with such other proof not register as voters?

*So many lawyers so many legal opinions. So many judges so many judgements.*

**Unknown**

In a 74-page judgement the Constitutional Court rejected the appeal of the New National Party against the ruling of the Cape High Court. After a lengthy argument Mr Justice Yacoob concluded that “it is clear from what has been said in this judgement that although the documentary requirements in issue may be said to differentiate between different categories of people, there is a rational connection between the measure and the legitimate government purpose of facilitating the effective exercise of the important right to vote. No discrimination or unfairness has been established.” The honourable judge further concluded that the attack on the constitutionality of the decision that only bar-

coded identity documents may be used for voters' registration fails. Mr Justice Yacoob based his judgement on the "rationality of the statutory provisions" and ignored the rule of reasonableness. He made the statement that: "Courts do not review provisions of Acts of Parliament on the grounds that they are unreasonable. They will do so only if they are satisfied that the legislation is not rationally connected to a legitimate government purpose." He further stated that: "Reasonableness will only become relevant if it is established that the [voters' registration] scheme, though rational, has the effect of infringing the right of citizens to vote." He finally concluded that there was no "infringement of the right of citizens to vote."<sup>149</sup>

In her minority opinion, Ms Justice O'Regan rejected the judgement of Mr. Justice Yacoob and distanced herself from both his judgement and the order the Court made. Ms. Justice O'Regan stated that she could not agree that in enacting the relevant provisions of the Electoral Act at the time and in the circumstances that it did, Parliament acted reasonably. She based her argument on reasonableness and stated "the structure of our Constitution generally reserves questions of reasonableness and justifiability for circumstances when the litigant has shown that a right has been infringed." She based this statement on the fact that the Constitution provides in section 36(1) that: "The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society". Ms Justice O'Regan further argued that "where a restriction on the right to vote arises not because of reasonable rules and regulations established by government for the conduct of the election, but because government introduces an unreasonable regulation, then a breach of the right will have been established." She finally concluded that the relevant provisions ruling the registration of voters "cannot be considered reasonable and justifiable in the circumstances." Ms Justice O'Regan therefore concluded that the relevant section of the Electoral Act is unconstitutional.<sup>150</sup>

The judgement of the Constitutional Court is final and must be accepted. These kinds of conflicting judgements of the same court are rather confusing. It seems that when some politicians and some judges start to think and argue, everything is lost for those voters who do not have bar-coded identity documents.

A very worrying fact is that Mr Justice Kriegler apparently resigned as chairperson of the Independent Electoral Commission because of the government's command that only bar-coded identity documents be used for voter registration. He apparently also resigned on the basis of the same complaint as that of the Public Protector, Mr Selby Baqwa. Mr Justice Kriegler complained that the Independent Electoral Commission was in fact placed under the Control of the Department of Home Affairs, because he had to work through the Department for budget allocations. For Mr Justice Kriegler, this was a direct denial of the independence of the Commission.

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149 Constitutional Court of South Africa, Case CCT 9/99, 13 April 1999.

150 Ibid.

## SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS

*It is a regrettable and notorious fact that the levels of crime in South Africa are unacceptably high. One aspect of crime that requires special investigative measures relates to corruption and unlawful conduct involving state institutions, state property and public money. Very often public servants and state officials perpetrate such conduct. The experience of other countries suggests that the investigation of conduct of this nature requires special measures beyond the routine investigations conducted by conventional law enforcement agencies.*

**Minister of Justice, quoted by Chaskalson P. Case CCT 27/00**

Apparently concerned with the widespread corruption, Parliament adopted the Special Investigating Units and Special Tribunal Act No. 74 of 1996. The Act provides for the establishment of special investigating units for the purpose of investigating serious malpractice or serious maladministration in connection with the administration of state institutions, state assets and public money in the public sector. It also provides for the investigation of any conduct that may seriously harm the interests of the public. The Act also provides for the establishment of Special Tribunals to adjudicate upon civil matters emanating from investigations by Special Investigating Units.

### Special Investigating Units

The President may appoint such Special Investigating Units on the grounds of any alleged –

- serious maladministration in connection with the affairs of any State institution;
- improper or unlawful conduct by employees of any state institution;
- unlawful appropriation or expenditure of public money or property;
- unlawful, irregular or unapproved acquisitive action, transaction, measure or practice having a bearing on state property;
- intentional or negligent loss of public money or damage to public property;
- corruption in connection with the affairs of any state institution; or
- unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.<sup>151</sup>

A Special Investigating Unit shall consist of a judge of the Supreme Court appointed by the President as head of the Unit. The Head of the Special Investigating Unit may appoint as many other persons as necessary to the Unit. In a most recent judgement the Constitutional Court ruled that it is unconstitutional for a judge of the Supreme Court to serve as head of a special investigating unit. The judgement was based on the constitutional principle of separation of judicial, legislative and executive authority, which apparently requires that a judge cannot simultaneously act as an investigator, prosecutor and as a judge. Chaskalson P concluded that “the functions that the head of the Special Investigation Unit has to perform are executive functions, that under our

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<sup>151</sup> RSA, *Special Investigating Units and Special Tribunals Act*, No. 74 of 1996, section 2.



system of government are ordinarily performed by the police, members of the staff of the national Prosecuting Authority or state attorney. They are inconsistent with judicial functions as ordinarily understood in South Africa.” Mr Justice Chaskalson further stated that the functions of the head of the Special Investigation Unit “are far removed from the central mission of the judiciary”. The conclusion was that the relevant article in the law providing for a judge to be appointed as head of the Special Investigating Unit is unconstitutional. (Case CCT 27/00)

### **Powers and duties**

Special Investigating Units have the normal powers usually conferred upon commissions of inquiry, the Auditor-General, the Public Protector and other like institutions. They may, for instance, enter and search any premises and attach and remove books, documents or objects relevant to their investigations. They must report regularly to the President on their progress of investigating specific allegations that have been brought to their attention. They must report at least twice a year on their investigations.

### **THE SPECIAL INVESTIGATING UNIT**

The Heath Special Investigating Unit is one such unit appointed by the President. The President appointed Justice W. H. Heath as head of the Special Investigating Unit and another judge of the Supreme Court as Tribunal President.<sup>152</sup> The Special Investigating unit became known as the Heath Special Investigating Unit. After the ruling of the Constitutional Court one can no longer refer to it as the Heath Special Investigating Unit, therefore it will subsequently be referred to as The Special Investigating Unit.

- The terms of reference of the Special Investigating Unit are to examine and to report to the President on
- any acquisitive act, transaction, measure or practice, pending or concluded, having a bearing on state or public property or public money that belongs to or vested in a state institution;
- any interests in, or in respect of, any property belonging to or vests in a state institution;
- any person, establishment, institution or society in or by which public property or public money may be accumulated or may have been used; and
- any real personal right to property belonging to or vests in the state, or to the fruits of such property that have accrued or will accrue to any person, establishment, institution or society other than a state institution.<sup>153</sup>

### **Manner of Operation**

The Special Investigating Unit devised its own *modus operandi* within the framework of its terms of reference and the powers conferred upon it by the Act. The Unit has designed an infrastructure to deal with sophisticated malpractice with regard to the misappropriation of public money and assets, the laundering and the squandering of such money, and to equip the members to investigate cleverly designed activities of syndicates.

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<sup>152</sup> RSA, *Proclamation* No. R. 24, 1997.

<sup>153</sup> *Ibid.*, paragraph 4.

Investigations are broadly conducted in the following manner:

1. In investigating matters, the Head of the Unit is assisted by the following:
  - legal representatives consisting of advocates and attorneys in full-time employment of the Unit;
  - experienced investigators from various disciplines, including former police officers, internal auditors, accountants and people with a legal background;
  - an information technology team to assist with those matters of investigation that require expert knowledge of computers;
  - the appointment of any other persons on an ad hoc basis to assist the Unit.
2. The investigation structure of the Unit is divided into various investigation teams, each under the control of a manager. Investigating teams are linked to legal representatives and other experts. They also have access to specialist investigators, such as accountants and computer experts.
3. The interaction between the investigating teams and the legal representatives consists of regular meetings, where advice on evidence is obtained and investigations and investigative strategies are discussed.
4. Investigations follow the dictates of each individual case. Such investigations involve the gathering of information by obtaining evidence, statements from witnesses and documents. Documents are obtained by either voluntary handing over, by the process of search and seizure, or by subpoenaing witnesses to produce such documents.
5. When an investigation is completed, an assessment is made as to the probability of a successful civil action. If so, civil proceedings are instituted through the Special Tribunal.
6. Civil action, very similar to that found in the High Court, but with a streamlined procedure, then follows. These civil actions are instituted before the Special Tribunal.
7. If the civil action is successful, judgement is obtained from the Special Tribunal, which has an effect similar to the finding of the High Court.
8. The Unit also has the powers to bring applications (inter alia for interdicts) in order to safeguard assets of state institutions or to prevent further losses. These applications are often brought as urgent and are dictated by the facts of the particular case.
9. The Unit does not institute criminal procedures. Its actions are limited to civil actions. However, the Unit refers all matters of a criminal nature that come to its attention to the Public Prosecutor of the relevant area for further action.
10. The Unit liaises with other bodies such as the Auditor-General, the Public Protector, the National Public Prosecutor, the South African Police Service and others, in order to co-ordinate investigations into matters that fall within the jurisdiction of the Unit.<sup>154</sup>

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154 The Heath Special Investigating Unit, *Interim Report 1998/99*, p. 2.

## **Investigations by the Unit**

In March 1999 the Special Investigating Unit was investigating 95 000 cases of alleged corruption with an estimated monetary value of more than R8 billion.<sup>155</sup> Of these cases 54 000 are connected with fraud in the supply of housing in KwaZulu-Natal and 17 000 in the Northern Cape. This is indeed a shocking indication of how corrupt the South African public sector is.

On 30 September 1998 the Head of the Special Investigating Unit submitted its half-yearly report for the six months ended 30 September 1998 to the Speaker of the National Assembly. According to this half-yearly report, the Unit successfully completed 20 cases for the period 1 April 1998 to 30 September 1998 and recovered an amount of more than five hundred million Rand in “stolen” money and property.<sup>156</sup> For this period the total value of money, property recovered, and the value of interdicts for preventing corruption, amounts to more than R848 million of which more than R50 million was in cash. For the period 1 January 1998 to 31 March 1999 the Unit was investigating corruption to the amount of R1 381 840 693,29, a tremendous increase. The monetary value of corruption prevented by the Unit was R384 741 276,93 and the amount of recovery of loss was R62 028 671,17. Other amounts saved or recovered were as follows:

Transparency in tender procedures – R855 434 402,00

State land reclaimed – R19 454 302,90

Debt collection – R 3 948 727,20

Enforcement of obligations R897 831,48

The actual amount recovered during the period was R60 370 744,29.<sup>157</sup>

These figures are staggering and are a good indication of how corrupt South Africa’s public sector became. This could in fact be only the tip of the iceberg, because not all the cases of possible corruption are reported to the Unit for investigation. Some cases of corruption may go undetected and unreported.

## **Special Tribunals**

The President may also appoint Special Tribunals to adjudicate upon justiciable civil disputes emanating from any investigating of any particular Special Investigating Unit. A Tribunal must consist of a judge of the Supreme Court as President of the Tribunal. The President may appoint additional members from the ranks of judges and magistrates.

Tribunals have the power of courts. Special Tribunals shall have jurisdiction to adjudicate upon any civil dispute brought before it by a Special Investigating Unit. They shall be independent and impartial and perform their functions without fear, favour or prejudice and subject only to the Constitution and the law.

The hearings of a Special Tribunal must be open to the public. However, if a Special Tribunal is of the opinion that it is in the interest of justice, or there is a

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155 Information telephonically obtained from Mr. Guy Rich, member of the Heath Special Investigating Unit, 12 March 1999.

156 The exact amount is R501 261 000.00

157 Heath Special Investigating Unit, *Analysis of Actual Savings/Recoveries – Period 1 January 1998 – 31 March 1999*, <http://www.heathsiu.co.za>

likelihood that harm may ensue to any person as a result of the proceedings being open, it may direct that such proceedings shall be held behind closed doors.

## **Evaluation**

According to these reports the Special Investigating Unit seems to be very successful in exposing public corruption and in recovering public money and property lost through corruption. It seems, however, that the government is not so keen on submitting cases of corruption to the Unit. Out of the 95 000 cases presently under investigation, the government submitted only three to the Unit. Private individuals, private organisations, opposition parties and “whistle blowers” inside government institutions brought the rest to the attention of the Unit. Could this be an indication that the government is soft on public corruption? I hope not.

The Minister of Finance in a debate in Parliament referred to Mr. Justice Heath as a Don Quixote taking on anything and anyone. He accused Heath of not having put a cent on the table of the money allegedly recovered by his Unit.<sup>158</sup> The Minister of Justice in a statement said that he doubts the correctness of the number of cases under investigation by the Unit. He also joined the Minister of Finance in his attack on Heath and accused Heath of acting like a politician. One wonders whether these remarks are maliciously aimed at discrediting Mr Justice Heath and his Special Investigating Unit, in the same manner as the Auditor-General came under attack from the Minister of Mineral Affairs some time ago – the same minister who is now Minister of Justice? Since the Constitutional Court case, the hunt was on against Judge Willem Heath. It started with the allegations of fraud in the R43 billion arms deal and the Standing Committee on Public Accounts’ request that the Special Investigating Unit must be involved in the investigation of such allegations. On the recommendation of the Minister of Justice, the President refused to appoint the Unit to investigate the so-called arms deal scandal. The Cabinet apparently decided that Mr Justice Heath should terminate his position as head of the Unit and to dissolve the Unit after finishing the cases already referred to it. Legislation is being prepared to change the Act so that a Judge of the Supreme Court could not be appointed as head of a Special Investigating Unit. This development caused an outcry in the press. The President has been accused of covering up, which was seen as a great blunder. The argument is that if there is nothing to hide, why then refuse the Unit to investigate the matter? This could seriously ham the Government’s endeavours to combat public corruption. However, the government apparently changed its mind about the Special Investigating Unit. On 6<sup>th</sup> August 2001 the Minister of Justice announced that Mr Willie Hofmyer has been appointed Head of the Special Investigating Unit and that the Unit will carry on with its task as usual. One can only hope that the Unit will just be as successful under Mr Hofmyer as it was under Mr Justice Heath.

It does not become government ministers to make fun of or to maliciously discredit a body instituted by the President for protecting the public against public corruption

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158 In his report dated 20 July 1999 the Auditor-General confirmed that the Heath Investigating Unit had indeed recovered and/or saved money and property for the state to the value of R1 326 million, of which R60 million was in cash.

and crime. It does not become them to discredit the personal integrity of a judge of the Supreme Court appointed by the President. This is another form of corruption. It is this form of corruption that causes people with integrity to lose heart. They are bound to ask themselves whether all their efforts to combat public corruption in a professional way are worthwhile. When people with integrity lose courage, the way to establishing a culture of corruption lies wide open.

### **AD HOC COMMISSIONS OF INQUIRY<sup>159</sup>**

The institutions discussed above are some of the permanent bodies established to control and combat corruption on a continuous basis. The need sometimes arises for the institution of commissions of inquiry on an ad hoc basis for inquiring into allegations of corruption or suspected public corruption.

In South Africa the power to appoint commissions of inquiry has its origin in the royal prerogative. The Governor-General of the Union of South Africa, as the representative of the British King, derived the same prerogative of the power to appoint commissions of inquiry from the King. From the then Governor-General it passed on to the Ceremonial State President and ultimately to the present Executive State President. The Commission Act No. 8 of 1947, as amended, therefore need not and does not empower the state president to appoint commissions of inquiry. It only regulates the appointment and the proceedings of a commission. The appointment of a commission of inquiry takes place by proclamation in the Government Gazette.

### **Considerations for appointment**

What considerations are entered into when one has to decide whether there is to be a commission of inquiry or whether one should proceed directly to the criminal court? In the first place the police cannot act until there is a complaint. When conditions are not suitable for police action or the police are unable to make progress, and the matter is of sufficient public importance, a commission should be appointed. With a commission information can be gained in cases where the police cannot act. If it is a matter with wide ramifications, the police will often find that suspects protect each other or make use of the right to silence. A commission, however, can simply summon and the witness is under obligation to speak. This sounds simpler than it is. A witness can refuse to incriminate himself, whereas the only questions a commission really wants to put to the witness are incriminating ones. It is, however, not everyone that can make use of this device. A refusal to speak concentrates suspicion on the witness and a public official especially cannot afford to expose himself or herself in this manner.

Another reason why a commission should be appointed could be that there is a public clamour for such a step. There may be far-reaching suspicion among the public on a matter of public concern. On order to demonstrate that the government is serious in combating corruption and serious about “clean administration” the government can appoint a commission.

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<sup>159</sup> Based on V. G. Hiemstra, “Role of Commissions of Inquiry” in Gildenhuys J. S. H., 1991, *Ethics and the Public Sector*, Juta & Company Ltd., Cape Town, pp. 92-95.

### **Appointment of commissioners**

The success of a commission will largely depend on its composition. The chairperson should be a prominent person who, like the other commissioners, should have no vested interest in the matter under investigation. The commissioners should preferably be persons having an expert knowledge of the matter in question, i.e. a commission of inquiry should be constituted in such a manner that the impartial experts have a keen awareness of the needs of all interested parties.

In the past there was a tendency to appoint judges of the Supreme Court as chairpersons of a commission of inquiry. The advantage of having a judge serving as chairperson is that he is, by tradition, supposed to be incorruptible and this fosters public confidence in the findings of a commission – this is an important consideration. Judges are also well versed in the art of hearing evidence, assessing facts and drawing sound conclusions. Unfortunately judges do not always have expert knowledge on matters falling beyond their own specialist legal field. For this reason experts on the matter are usually appointed as commissioners in addition to the judge, serving as chairperson, to assist him.

### **Powers, procedures and modus operandi**

The State President may issue regulations on procedure and confidentiality. He may also make provision for protection of the commission against disparagement, outside influence or anticipation. Procedures are generally public, but a commission may at its discretion exclude persons or classes of persons from its proceedings.

A commission to which the Commission Act has been made applicable has the same powers as the Supreme Court to summon witnesses and to call for the production of books, documents or objects. A commission may appoint an expert investigator who is entitled at all reasonable times and on presentation of his warrant to enter any building where a particular book, document or object is kept or is on reasonable grounds believed to be kept. The investigator may demand from any person in whose custody it is, to produce it and to explain any entry in it.

Witnesses or persons subject to investigation are not by law entitled to legal representation, whether they appear of their own accord or in response to summons. A commission may, however, within its discretion permit such representation.

Each commission lays down its own procedures. There is usually no precise charge, only general terms of reference when the President institutes a commission by proclamation. The terms of reference usually lay down broadly what has to be investigated and they are sometimes changed as the commission proceeds with its investigation. There are discussions between the commission's advocate and the commissioner as to new avenues of investigation and who should be called to the stand. In a court it is, of course, entirely different. The judge and the prosecutor do not discuss the case between them. A commission is a fact-finding body, not caring who might be affected. The criminal court, on the other hand, must decide whether the charge which the accused faces has been proved.

How can a commission be effective in combating and controlling corruption? The answer depends on the commissioner and the investigators and advocates who assist him. The advocate, who leads the evidence and plays the part of prosecutor, has

to be assiduous, enthusiastic and fearless. Persons with these attributes are not plentiful. The advocate of a commission is the linchpin of the whole affair, even to a greater degree than the commissioner. Nevertheless he or she needs the forceful moral support of the commissioner.

### **Findings and reports**

A commission's findings are not binding like a court judgement and are based on a balance of probability; that is to say, proof beyond a reasonable doubt is not essential. The finding can provide information and material for criminal prosecution in which the facts have to be proven all over again. The question whether and at what stage the case should be handed over to the Public Prosecutor can be a delicate one. It can be delicate because it might be done too soon, before sufficient evidence has been gathered, or it might prove to have been unjustified, to the detriment of the prestige of the commission.

When one asks whether commissions of inquiry are effective instruments for combating and controlling corruption, then the answer is that they can bring corruption to light where ordinary police methods might have proven inadequate. The qualification is always that the inquiries must be efficiently conducted and the findings must be acted upon. It is expected from a commission to report its findings to the State President upon completion of its investigations. The effectiveness of a commission of inquiry depends on how the State President is going to handle its report. Commissions are useful to find solutions for problems, or for postponing problems the government does not want to tackle, which would be a deed of corruption in itself.

It has been argued in criticism of commissions of inquiry, that the government sometimes uses them to delay having to take a decision about a vexing problem. This could possibly be because the government does not have a policy on the matter in question and, therefore, refers it to an expensive and time-consuming commission of inquiry. It is also alleged that the government, for some unknown reason, sometimes has no intention of doing anything constructive to rectify a matter of complaint, but simply appoints a commission of inquiry as a means of placating the interest parties. Commissions of inquiries may also drag on for many months or even years. By the time it delivers its report, the public or interested parties may have lost interest in the matter. The matter then simply disappears from the public scene without anything being done about it.

One should mention that an involved matter, such as alleged political or administrative corruption, could hardly be subjected to a thorough investigation other than by means of a commission of inquiry. However, such a commission makes only recommendations and cannot be held responsible for action to be taken as a result of its findings. The State President must then take a decision about the recommendations, once it has been established whether they are capable of implementation. It is the State President, as appointing authority, who will have to accept responsibility for action taken as a result of the findings of the commission of inquiry.

However, with regard to corruption, commissions of inquiry can provide enormous support to the criminal justice system. It only depends on whether the State President or another delegated political office-bearer is going to act and submit the matter to a

public prosecutor for prosecution. If no action is taken, the State President or delegated political office-bearer will himself or herself commit a deed of corruption, or even make themselves guilty of obstructing justice.

### **THE ROLE OF INVESTIGATIVE JOURNALISM IN COMBATING CORRUPTION**

The electronic and printed news media play an important role in informing the public on government actions and activities. They have indeed an unwritten obligation as private ‘watchdogs’ to guard the interests of the public vis-à-vis the government. It is therefore not strange that in real democracies the freedom of the press is guaranteed by the Constitution. Under the title of “Freedom of expression” the South African Bill of Rights contained in the Constitution, guarantees the “freedom of the press and other media”. This right, however, does not extend to propaganda for wars; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.<sup>160</sup> This means that the press and electronic media enjoy freedom of expression but freedom with responsibility. In a real democracy the political and social obligation of the news media as ‘watchdog’ of the public is to inform them of the real facts of government action. In other words, they must expose the truth and nothing but the truth. Failure to do this and covering up public corruption and maladministration would make the news media collaborators in public corruption. Remember that the press is a mirror in which the government and political parties can look at themselves.

#### **The purpose of investigative journalism**

The survival of democracy is to a large extent contingent upon whether the public understands the problems of their society. Only if the news media can establish and maintain a large and effective corps of truly professional investigative reporters and editors can these problems, such as corruption, be defined. Journalists must have high standards to test their reporting and they must be consistently honest, responsible, fair and non-partisan in their attitudes – they must be persons with integrity. The attempt to be consistently honest, fair and non-partisan must extend to the top management and top editors and should not be confined to the reporters and working editors. It makes no difference how knowledgeable and balanced a reporter is, his best work can be weakened or destroyed by a superficial, ignorant, or dishonest editor or top management.

*The tyranny of the press is no more conducive to democracy than the tyranny of politicians.*

**Clark R. Mollenhoff**

#### **The legal and moral difficulties facing investigative reporters**

There are many difficulties and perils facing the investigative reporter. The inexperienced reporter may be misled by clever and not so honest public officials and

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160 Section 16 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996)



politicians and, in turn, mislead his editors and the public. An experienced reporter who lacks independence or is fearful of the partisanship or biases of his editors towards the ruling party may parrot the government line until he receives firm instructions to the contrary, or eventually feels obliged to resign.

*It seems that some scandals are protected by a conspiracy of silence like that which has enabled the Mafia's underground culture to thrive in Sicily for generations.*

**Kurt von Keyserlingk**

Another difficulty is to obtain true and correct information from public officials. Public officials who feel that they will be held accountable by challenges from honest experienced reporters will be very cautious about providing any information. However, those public officials who think they are dealing with reporters who can be misled or hand-fed will engage in oversimplifications, deceptions and distortions of facts without being held up to ridicule. Another problem for the investigative journalist is that knowledge of corruption is kept within certain groups of individuals who will not discuss it with outsiders or give it any kind of official recognition. Those in the know may include officials in positions of authority who have the power to stop the irregularities but fail to do so. They usually fall into two main categories: officials who directly benefit from the irregularities and those who will have much to lose by working against them. Those in the second category are the employees of the perpetrators of corruption who are dragged into the scheme against their will. These officials fear that their careers will be placed in jeopardy if they disobey irregular instructions. They keep the corruption secret because they cannot report the matter to their own departmental head or minister as he himself may be involved; and they fear telling outsiders because it can expose them to disciplinary procedures for unauthorised disclosure of so-called confidential information.

*If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.*

**James Madison in The Federalist**

We now come to the legal and moral question of how the investigative reporter breaks this conspiracy of silence and so-called confidentiality to get the facts? The journalist is seeking 'confidential' information that will not be given freely. He must not succumb to the temptation of obtaining it by irregular means and must not steal incriminatory documents. Then the journalist faces a dilemma when dealing with informants who have signed oaths or agreements of confidentiality or who will be breaking civil services rules in giving information to the news media. The journalist

has the obligation to protect the identities of such informants, an obligation that is not always recognised by the courts.

One way of tackling this problem is for the journalist to make known in various ways that he is receptive to receiving anonymous communications. In such a manner detailed information might be gathered over the telephone from anonymous callers. In this way documents may also be received anonymously through the post. There will always be someone ready to blow the whistle on the perpetrators of corruption if he or she can do so anonymously.

In many cases anonymous evidence will not stand up by itself in court, but it guides further investigation. It may also provide leads and trap questions to ask when the journalist finally confronts the perpetrators of corruption.

### **The perils of investigative journalism**

There are many perils facing investigative journalists. The first is the risk of legal action that could bring ruin on a publication that lacks adequate financial backing. No matter how carefully the journalist prepares his report he should always take legal advice on the final draft before it is published. Even if a report is substantially true, a poor choice of words could mean losing a court case on a technicality. The journalist and his management must be prepared for litigation even when the legal advisers have approved the article. The public officials it exposes can become desperate and fight for their lives and careers in court on the most flimsy grounds. Investigative journalism can be a costly business even if the publisher wins its court case.

Another peril of investigative journalism is that the journalist must be prepared to put his career at risk. Politicians and public officials can put pressure on editors and owners of news media not to publish certain reports and allegations. They sometimes argue that articles may be defamatory, mischievous or misleading because the journalist is incompetent, or has a political axe to grind, or is the pawn of parties with special commercial or political interests. A journalist may be accused of having a personal enmity against the ruling party and of advancing his career through dubious means. This can be unnerving if a journalist is not confident that the information collected is strong enough to stand up in court. It is therefore helpful if an investigative journalist's professional and personal life is above reproach. The public and his superiors must also have confidence in his integrity and competence. There is also another reason why he should have these attributes. Successful investigative journalism usually results in someone being hurt. If the journalist cannot apply decent standards to his work in order to get a spicy story, he may hurt the innocent.

### **Combating corruption through investigative journalism**

We must now ask the question: how can investigative journalism help in the battle against corruption? Investigative journalism can indeed play an enormous role in combating public corruption. An investigative journalist has to work like a public prosecutor preparing a case. He must conduct his investigation in anticipation of a possible court case, because the news media enjoy no special protection against defamation actions. This means that the journalist has to ask two questions about every assertion in his or her report. Can I satisfy a court that the information is true

and based on facts? Can I satisfy a court that it is in the public's interest to publish or expose the truth? The journalist would therefore be wise to be in possession of affidavits, documents and other items of concrete evidence to back every element in his report or article before venturing into printing it.

By providing, for instance verbal evidence, affidavits and documents such as photocopies of letters, internal memos, invoices, accounts and technical reports to the Public Protector or the Special Investigating Unit for further investigation, investigative journalism can provide a firm launch pad for official investigations. Bringing the details of a corruption scandal into the open, in press, radio and television news reports, seems to give such information some kind of official status. Just 'flying a kite' by way of vague allegations of a possibility of corruption may prompt the Public Protector or the Special Investigation Unit, to start an investigation simply because of the wide publicity given to such allegations. It may even force the President to appoint a special commission of enquiry into the matter. The news media can indeed play a decisive role in helping the government to root out public corruption.

## **SUMMARY**

The South African government has established various permanent and ad hoc institutions to combat corruption. These permanent institutions include the Constitutional Court, the Courts of Law, the Public Protector, the Auditor-General, the SA Human Rights Commission, the Independent Electoral Commission, the Special Investigating Unit and many others. Some internal institutions have also been established, such as the National Unit for Investigation of Irregularities in the Public Sector, the Unit for Corruption in the Department of Home Affairs, the Unit for Corruption in the Police Service, the Independent Complaints Directorate in the Police Service for public complaints against police officers, and many others. Legislation also empowers the State President to appoint ad hoc commissions of inquiry for any purpose, including investigations into public corruption. All these institutions are doing well in combating corruption.

Until the introduction of the new South African Constitution, courts examined civil rights issues in respect of state legislation focused on procedures rather than substantive merits. Courts were actually forbidden by the former constitution to inquire into or pronounce upon the validity of an act of parliament. However, the role of the courts changed radically with the introduction of the new Constitution. The Constitution is now the supreme law of the country and even government is subjected to it. The institution of the Constitutional Court in February 1995 was an important milestone in the introduction of a constitutional democracy and the end of parliamentary sovereignty. The Constitutional Court is now the highest court on constitutional matters and its decisions are final. The Constitutional Court makes the final decision on whether an act of parliament, a provincial act, municipal regulation or an act of a government institution is constitutional. At last the people of South Africa have a system that can protect them from politically corrupt legislation that impinges upon their civil rights.

Law is one of the great achievements of human civilisation. People's chances of living together happily and fruitfully in society depend upon their ability to live according to the law. Every government from time immemorial has established certain official institutions to enforce the law. South Africa has committed itself to a system of courts to enforce the laws of the country and to punish the violators of such laws. The courts' function is to detect criminal corruption in the public sector and to punish the perpetrators of such corruption. The lower magistrate's courts are the first line of courts combating criminal corruption. The High Courts are the second line of institutions controlling criminal corruption. High Courts may also decide on constitutional matters except a matter that only the Constitutional Court may decide. The Supreme Court of Appeal may decide appeals on any matter. It is the highest court of appeal except in constitutional matters. An order of constitutional validity by a High Court or the Supreme Court of Appeal has no force until it has been ratified by the Constitutional Court.

Despite the imposing array of institutions enforcing public administration responsibility and accountability, there is still growing concern that public administration should become more responsive to the public's needs and be less corrupt. There is a broad area of official conduct that is unacceptable in the eyes of the community, but against which no punitive sanction can be imposed. For combating this kind of corrupt action, the Office of the Public Protector was created. The Public Protector is independent and subject only to the Constitution and the law. He must be impartial and must exercise his powers and perform his functions without fear, favour or prejudice. No person or organ of state may interfere with the functioning of the Public Protector. He is directly accountable to the National Assembly. The powers vested in the Public Protector covers all forms of public corruption. The Public Protector is concerned not only with ensuring the honesty of public officials, but also with ensuring that they treat members of the public with respect.

Another traditional institution to combat public corruption is the Office of the Auditor-General. The Auditor-General is independent and reports directly to the National Assembly. Timely and regular external auditing of the financial statements and records of all public institutions is an imperative for the fight against corruption. It is of utmost importance that the Auditor-General acts independently of the Executive Authority at all government levels, or any other commissioning body in the public sector. To enable the Auditor-General to monitor, and if necessary criticise, the financial activities of government institutions impartially and with undaunted courage, it is of cardinal importance that he must not only be able to act independently but that he must be seen as an independent agent of the public. Through his regular financial, compliance and performance auditing processes, the Auditor-General is in the front line to detect and combat corruption in the public sector. Skilled auditors should be able to pick up corrupt actions such as falsification, forgery, embezzlement, graft, ghosting, illegal diversion of public resources, unauthorised overspending of budget votes and unauthorised transfers between budget votes. The Auditor-General can also determine, through his performance auditing, the efficiency and effectiveness of every government department. The possibility of being caught out by the Auditor-General

hangs like a sword over the head of every public official. In this manner he serves as a deterrent against corruption and maladministration.

The South African Human Rights Commission is an important institution for promoting and protecting human rights in South Africa. It is an important institution for controlling political corruption by public officials in the sense of preventing them from disregarding or negating individual citizen's human rights. Another task of the Commission is to promote the protection, development and attainment of human rights, and to monitor and assess the observance of human rights in the country. The Human Rights Commission or any member of the Commission, or a member of the staff of the Commission, must be independent and impartial. They shall serve impartially and independently and exercise and perform their powers and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.

Elections are one area of public activities where corruption can be rife. Special measures should be taken to prevent electoral corruption in any form. For combating electoral corruption and to ensure free and fair elections, the Independent Electoral Commission has been instituted. The main function of the Independent Electoral Commission is to manage elections of national, provincial and municipal legislative bodies in accordance with national legislation and to ensure that they are free and fair.

Apparently concerned about the widespread corruption, Parliament adopted an act for the establishment of special investigating units for the purpose of investigating serious malpractice or serious maladministration in connection with the administration of all state institutions. The Special Investigating Unit is one such unit appointed by the President. This Unit devised its own *modus operandi* within the framework of its terms of reference and the powers conferred upon it by the Act. According to its biannual reports the Special Investigating Unit seems to be very successful in exposing public corruption and in recovering public money and property lost through corruption.

The need sometimes arises for the institution of commissions of inquiry on an *ad hoc* basis for inquiring into allegations of corruption or suspected public corruption. Special legislation allows the President to appoint such commissions, usually under the chair of a judge of the High Court. The success of an *ad hoc* commission will largely depend on its composition. Members should have no vested interest in the issue to be investigated and should preferably have expert knowledge of the matter in question. *Ad hoc* commissions have the powers of investigation prescribed by law and the same powers as the Supreme Court to summon witnesses and to call for the production of books, documents or objects related to the issue under investigation.

There is no doubt that the news media have an important function and indeed an obligation to expose public corruption through the process of investigative journalism.

**Possible examination questions:**

1. Explain the role of the Constitutional Court in protecting the public against unconstitutional acts of government. (20 minutes)
2. Discuss the role of the other Courts of Law in combating public corruption. (20 minutes)
3. Explain the role of the Auditor-General in exposing public corruption. (45 minutes)
4. Explain the role of the Public Protector in protecting the individual against administrative corruption. (30 minutes)
5. Discuss and evaluate the role of the Human Rights Commission in protecting the individual's human rights. (45 minutes)
6. Discuss and evaluate the role of the Independent Electoral Commission for securing free and fair elections by preventing election fraud. (45 minutes)
7. Discuss and evaluate the role of the Special Investigating Unit in recovering financial losses for the state caused by public corruption. (45 minutes)
8. Under what circumstances could the Courts, Public Protector and the Human Rights Commission not be neutral and unbiased towards any political party? (30 minutes)
9. Explain the role of ad hoc commissions of inquiry for combating public corruption. (30 minutes)
10. Discuss and substantiate the importance of investigative journalism in combating corruption. (30 minutes)

## EPILOGUE

Public corruption is not only endemic to South Africa. The whole world is subjected to this crime against humanity. Unethical conduct in the form of public corruption and maladministration is a global phenomenon. It is a very serious public disease spreading its lethal viruses throughout the universe and contaminating every part of it. Public corruption is also as old as the world of political rulers and public officials – whether the old monarchies, authoritarian dictatorships or so-called people’s democracies or true modern democracies – all were and still are plagued with corrupt politicians and public officials. It seems as if there has recently been an upsurge of public corruption all over the world. Some African countries hit the top of the list of most corrupt countries in the world, with South Africa more or less in the middle of the list. Although this is based on perceptions rather than facts, it is nevertheless nothing to be proud of!

Corruption erodes the moral fabric of every society, violates the social and economic rights of the poor and the vulnerable, and undermines democracy. Unless effective remedies to fight and eradicate corruption are such as to encompass it in all its forms, the undertaking may well be inadequate. It is frequently argued that underdevelopment, poverty and the deterioration of religious belief are the causes of moral decay and unethical conduct. However, no social upliftment, no religious education, no ethical codes of conduct and no laws will ever stop some people from being corrupt. Society will always contain a certain percentage of people who have no conscience, people without that little voice inside them telling them when they are doing wrong. The deterrent effect of criminal punishment for corruption cannot be ignored. Consequently punishment for corruption should be exemplary. The confiscation of the fruits of corruption will help teach that this kind of crime does not pay. For these reasons government must invent and establish institutions for eradicating corruption in the public sector – if this is ever possible.

There are a few worrying aspects about the Public Protector, the SA Human Rights Commission and the Independent Electoral Commission. One of these is the power of both the Public Protector and the Human Rights Commission to direct people “whose presence is not desirable” not to attend their hearings. This is normal procedure for courts of law, but in this case it could open the door for corruption by the very bodies that are supposed to combat corruption. When newspaper reporters are, for instance, ordered out of hearings then the principle of transparency is jeopardised. Another problem is the complaint of all three bodies that their independence is in jeopardy because government departments control their budgets. They are afraid of becoming extensions of such departments because their activities are indirectly controlled through the control of their budgets. This is not very serious, because the Department of Justice, without jeopardising their independence and impartiality, controls all the budgets of the courts of law. The danger lies in the possibility of political nepotism with the appointment of judges and commissioners – this is a more serious possibility. What is really worrying are the allegations against the chairperson of the Human Rights Commission of being a racist himself. If this is true, then the impartiality of the Human Rights Commission could seriously be doubted. The attacks of the Minister of Finance and the Minister of Justice on the integrity of Mr Justice Heath and his

Special Investigating Unit are reprehensible. The latest developments around Mr Justice Heath and his Special Investigating Unit are worrying. This jeopardises the government's integrity and places a question mark behind its seriousness of combating public corruption. The following article is a typical example of how some journalists commented on the controversy over the arms deal of R43 billion.<sup>161</sup>

"The way to tell the difference between a relatively honest and a downright corrupt government these days is simply by looking at its procurement policies. When a government goes to the market with a shopping list consisting of items that the state patently doesn't need, and that the public doesn't want, it does not take a very sharp mind to deduce that the real purpose of the exercise is not to acquire loads of expensive and mostly useless junk for which it will sooner or later be required to give good account, but to allow the insiders who negotiate the deals with the suppliers to rake off commissions. It makes little difference to the principle involved whether the shopping list is made of military hardware or of apparently more acceptable (to the public, that is) civilian hardware like new harbours in unlikely locations, airliners that are destined to rot in the veld for lack of suitable airfields, or huge money-generating operations like lotteries. The rule is clear: Beware of governments spending big money because all big spending opens the door to graft. Somehow, the public is easily blinded to this simple truth by the confusing and convoluted interpretations placed on state acquisitions by the busybodies of the media whose job it is to bring them to the attention of the public. The moment the news breaks that public money is to be spent on some new off the-wall project, the media, eager to capitalise on its sensational news value, is caught up in the futile business of explaining, exhaustively, the fatuous and dubious arguments put forward by government spokesmen justifying the intended purchase or contract. Diagrams and charts appear daily, featuring real live photographs of the hardware required or, if these are unavailable, sketches from memory or pure fantasy of widgets large and small designed to kill people, to rob them or to desecrate the landscape. The longer the list and the more expensive the items on it, the more available time and space is required to enlighten, or, if you wish, to confound the public. Usually the first doubts are voiced in timidly worded letters to the editors of national newspapers. Only when (and if – it doesn't always follow) these become a flood of indignation, do editorials begin to ask the questions that ought to have preceded the procurement decisions. By that time, however, it is usually too late. The contracts are signed, the kickbacks have been safely stowed away in foreign bank accounts, and the suppliers can take pride in having suckered yet another morally degenerate government into stealing from the public in order to enrich their own ruling establishments. There is, thus, nothing new in the latest South African arms scam. Perhaps it is breathtakingly larger than most of the other scams that, somehow, the South African taxpayer has digested, and it shows all the marks of a government that is so badly managed that it cannot even organise a comprehensive rip-off with finesse. But it is the same old process of naked theft of state funds conducted by the brothers-in-law of our elected leaders at the expense, finally of the victims of AIDS, poverty and ignorance. How timely the slogan "the need for greed" is in the country, and how clever of the SABC to give it to us when that appears to be all that the newly entitled

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161 *Aida Parker Newsletter*, Issue No. 246, January 2001, p. 15.



really need. They should know! Anyone knows how it reads in Latin in case we need it for our new coat of arms? *Opus esse avaro?*”

Add to this the fact that the Special Investigating Unit is going to be dissolved; the logical deduction is that the government has something to hide. This can lead to a public perception that government is corrupt. This is bad publication for any government!

Other newspapers found that the South African government is really trying to combat public corruption in the Country. J. P. Landman of *Die Burger* wrote:

“January (2001) was the month of corruption and allegations of corruption. First there was the arms scandal, inflamed by the controversy around Mr. Justice Willem Heath. Personally I found the government’s handling of it depressing. Then the Scorpions and the Receiver (of Revenue) arrested officials and private individuals allegedly involved in tax corruption. To prove how severe corruption is among us, a financial journal reported that people are offering their Health & Racquet Club membership at a price of R5 500. This while the club has been declared insolvent and its membership contracts worth nothing and already being repudiated by the new owners.

It seems as if the need to make quick money in a dishonest way runs deep among all South Africans. It feels as if a flood of corruption overwhelms one. However, our society is acting against corruption. Research shows what has been done. Newspaper reports that appeared during the 17 months between June 1999 and October 2000 have been analysed. Each individual case of corruption published by the press has been noted. The alleged arms deal corruption is one of those incidents noted; the issue of counterfeit passports is another; an official of Mapumalanga presenting false qualifications is a third and so forth – a total of 167 incidents. Naturally, some incidents, for instance the arms deal scandal, were reported on a large scale and in many newspapers. All reports refer to the same incident. It is striking how one is overwhelmed by masses of reports that apply only to one incident.

We then analysed the reasons why these 167 incidents appeared in the press. Was it because of investigative journalism? Or was it whistle-blowers who informed the press about these incidents of corruption? Or was it the government who identified these incidents of corruption? 75% of all cases reported in the press were reported because of the fact that an official process already picked up and disclosed the corruption. The official process could be a report of the Auditor-general; action by one of the official anti-corruption units within the public service; internal investigations and audits; and disciplinary hearings of officials. In the disclosure of such cases the press came to hear about it. Only 11% of the incidents reported were the result of investigative journalism. Another 10% were reported as the result of the activities of civic associations, such as the Black Sash, Lawyers of Human Rights, Labour Unions and others. “Whistle-blowers” initiated the balance of 4%. It is possible that some of the official procedures were put in action by “whistle-blowers”.

The implication of these statistics is positive. In 75% of cases of corruption being reported official procedures are already in action. This means that public corruption in South Africa is not out of hand. Processes and institutions do exist

to intercept and expose cases of public corruption. It is good news for the public to learn that the Scorpions and the Receiver of Revenue have clamped down on corrupt officials and members of the private sector.

Corruption is part of any modern society. The question is whether effective measures to fight corruption exist. Our research proved that such measures do exist. However, Transparency International is of the opinion that the multiplicity of anti-corruption institutions splits the fight against corruption. The public would like to see one strong anti-corruption institution that can act in a co-ordinated manner fighting corruption.

A few years ago no anti-corruption unit existed in the Police Services because there was little corruption. By the end of the century several such units existed for fighting corruption and many individuals have already appeared in the courts on corruption charges. This illustrates the importance of the right anti-corruption institutions. They do exist in South Africa. After a bleak January 2001 one is encouraged by the fact that such institutions exist and are doing their work.”<sup>162</sup>

In the light of the idea that only one strong anti-corruption unit should exist to act in a co-ordinated manner in the fight against corruption, it is a great pity that the Heath Special Investigating Unit is going to be dissolved. It should rather be retained and its powers extended to make it more effective. For instance, the Unit should have been allowed to investigate any allegation of public corruption on its own initiative without waiting for an official instruction from the President. The fact that the President refused to appoint the Special Investigating Unit to investigate the alleged arms-deal scandal causes grave concern about the integrity of the government. The appointment of Mr Willie Hofmyer as the new Head of the Special Investigating Unit and the decision to “reinstate” the Unit to carry on with its investigations proves to a certain extent that the Mbeki government is serious about combating corruption in the Public Sector.

One question remains unanswered: can government impose morality on society? The best answer to this question is that of Mangosuthu Buthelezi:

“Morality and responsibility must begin in the home and in local communities, and cannot be imposed on society by the government. We need to become aware of the deep impact of our actions and our words ... whatever we do are accomplished within the social area, where lives are affected by every action and by every failure to act. Each person needs to set an example to others by living a life dedicated to the good of the whole, a life of principle, morality, righteousness and responsibility. The transformation of an entire society begins in the home and in communities with individual people. It cannot be forced from the upper tiers of government down to the people, but must come from the people and steadily press forward into every level of society.”<sup>163</sup>

There is no better conclusion to this book than this statement from Buthelezi.

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162 *Die Burger*, 6 February 2001. A free translation from the original Afrikaans.

163 Quoted from a message to the International Society for Krishna Consciousness during its annual Festival of Chariots in Durban on 5 April 1999.

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Immoral, unethical conduct of politicians and public officials is a global scourge of the present day. The South African Government is leading the battle against corruption in the public sector, and it must be supported by officials educated to recognise, and enabled to combat, every appearance of this pestilence.

**Ethics and Professionalism** is essential equipment for such education. Having been constructed on the principles of knowledge progression and outcome based education, it sets out explaining the meaning of ethics and its importance for public officials. It then examines secular and religious moral values before addressing the phenomenon of corruption. Equipped with knowledge of the latter, the reader may then progress to strategies to counter corruption, studying bills of human rights and ethical codes of conduct. Aiming at the outcome of professional public managers with integrity, the book next inspects various public service models before discussing the need for professionalising the vocation of public management. A brief investigation of how corruption is being fought worldwide and in South Africa concludes the work.



J.S.H. Gildenhuys is a well-known South African Professor of Public Administration. His career has taken him to both the academic and professional fields. He has been the recipient of numerous awards for excellence, and this is the latest of his fifteen publications on the subject.